

1992

RICHARD DEE THOMAS, Plaintiff and Appellant, v. PETE HAUN, et al., Defendants and Appellees : Brief of Appellee

Utah Court of Appeals

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Recommended Citation

Brief of Appellee, *Thomas v. Haun*, No. 920875 (Utah Court of Appeals, 1992).

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UTAH COURT OF APPEALS

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AT

DOCKET NO. 920875 IN THE UTAH COURT OF APPEALS

RICHARD DEE THOMAS,

Plaintiff and
Appellant,

v.

PETE HAUN, et al.,

Defendants and
Appellees.

Case No. 920875-CA
Priority 15

BRIEF OF APPELLEE

Appeal from a Final Order of Dismissal of the Third
Judicial District Court, Salt Lake County, State of Utah,
the Honorable J. Dennis Frederick presiding

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FILED
Utah Court of Appeals

APR 19 1993


Mary T. Noonan
Clerk of the Court

IN THE UTAH COURT OF APPEALS

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IN THE UTAH COURT OF APPEALS

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Defendants and
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Case No. 920875-CA
Priority 15

BRIEF OF APPELLEE

STATEMENT OF JURISDICTION

Jurisdiction over this matter is conferred upon this Court by Utah Code Ann. § 78-2a-3(2)(j), providing for jurisdiction in the court of appeals over cases transferred from the Supreme Court.

STATEMENT OF THE ISSUES PRESENTED AND STANDARDS OF REVIEW

1. Whether the trial court abused its discretion in granting the defendant's motion to dismiss Thomas's complaint for failure to state a claim upon which relief can be granted without allowing him the opportunity to amend.

STANDARD OF REVIEW: A trial court's decision whether to allow an amended complaint is reviewed for an abuse of discretion. Cf. Kasco Services Corp. v. Benson, 831 P.2d 86, 92-93 (1992) (reviewing denial of motion for leave to amend); Debry v. Valley

Mortgage Co., 835 P.2d 1000, 1008-09 (Utah App. 1992) (same). See also Eldridge v. Block, 832 F.2d 1132, 1135-36 (9th Cir. 1987) (reviewing dismissal under Fed. R. Civ. P. 41(b)).¹

DETERMINATIVE OR IMPORTANT PROVISIONS

Addendum A to this Brief contains the complete text of the following provisions:

Utah R. Evid. 201
28 U.S.C.S. § 1915(d) (1989)
42 U.S.C.S. § 1981 (1986) (amended Nov. 21, 1992)
42 U.S.C.S. § 1983 (1986)
42 U.S.C.S. § 1985(3) (1989)
42 U.S.C.S. § 1986 (1989)

STATEMENT OF THE CASE

Nature of the Case

This is an appeal from a final order dated October 28, 1992 of the Third Judicial District Court, Salt Lake County, Utah, the Honorable J. Dennis Frederick presiding, dismissing plaintiff's civil rights complaint for failure to state a claim upon which relief can be granted.

Course of the Proceedings and Disposition Below

Thomas, an inmate of the Utah State Prison, commenced this action by filing his complaint on July 30, 1992. R. 2-38. In

¹Thomas also apparently challenges the dismissal of his complaint on the ground that it was based on an unsigned minute entry. This contention is simply factually incorrect and therefore is not further addressed in this Brief. A copy of the Order of Dismissal signed by the Honorable J. Dennis Frederick and dated October 28, 1992 is contained in Addendum C to this Brief. R. 63.

addition to naming the Attorney General², the complaint purported to name as parties defendant nine members of the Utah Board of Pardons, two employees of the Utah Department of Corrections, and a district court judge. However, Thomas served process only upon the Attorney General and no other defendant made an appearance in the action. R. 43.

On September 1, 1992, the Attorney General filed a motion to dismiss the complaint on the grounds that (1) Thomas's allegations were incomprehensible and conclusory and therefore failed to state a claim upon which relief could be granted, (2) in a representative capacity, the Attorney General was not a "person" subject to suit under 42 U.S.C. § 1983, and (3) the complaint did not allege any personal participation of the Attorney General in any conduct that allegedly caused Thomas to suffer constitutional harm and therefore the Attorney General was not liable under § 1983 in a personal capacity. The motion also sought an award of attorney fees under Rule 11 of the Utah Rules of Civil Procedure. R. 44-52.

On September 9, 1992, Thomas filed an "answer" to and motion to strike the Attorney General's motion to dismiss. R. 54. One month later, on October 9, 1992, the district court made a minute entry granting the motion to dismiss "for the reasons

²Pursuant to Rule 38 of the Utah Rules of Appellate Procedure, General Graham is automatically substituted for her predecessor R. Paul Van Dam to the extent he was sued in his official capacity. The caption of Thomas's complaint purports to bring suit against Van Dam in both his personal and official capacities. To the extent former General Van Dam may be deemed a party, this brief is also filed on his behalf.

specified in the memorandum in support thereof," but denying attorney fees. R. 59. An order of dismissal was entered on October 28, 1992, nearly two months after the motion to dismiss was filed. R. 60. On October 30, 1992, Thomas filed his notice of appeal. R. 65.

Statement of Facts

The allegations of the complaint consist of conclusory generalizations with few factual allegations. Paragraph 23 is the only portion of the complaint that contains any allegations against the Attorney General specifically. It alleges that the Attorney General "is in violation of plaintiff's Constitutional Right to Credit [for] time served" and that the Attorney General "was aware, had knowledge that a conspiracy [to deprive Thomas of his civil rights] was about to be committed, and having the power to prevent or aid in preventing the commission of the same, neglect [sic] or refuses to do so." R. 11. Thomas further alleges that he wrote letters to the Attorney General, "notifying him of credit time [sic] served which he ignored, and also informed him of misinformation." R. 12.

In addition, Thomas appears to complain of various alleged procedural due process violations in the conduct of a parole rescission proceeding against him in October 1990, R. 5-6; and of an alleged conspiracy among members of the Board of Pardons to deprive Thomas of equal protection of the law by denying him credit for time served. R. 7-8. He appears to collaterally attack a habeas corpus proceeding before Judge Sawaya of the Third

Judicial District Court. R. 8-10. He appears to again allege the denial of credit for time served and procedural due process in proceedings before the Board of Pardons in November 1991, R. 10; and he alleges that the two named Department of Corrections employees denied his "constitutionally protected liberty interest," apparently in allegedly refusing to "procure Board of Pardons hearing to receive credit for time served." R. 13.

Thomas's claims are brought under federal civil rights provisions 42 U.S.C. §§ 1981, 1983, 1985(3) and 1986. The complaint does not purport to state any state law claims.

In a previous action in federal district court, Thomas filed a civil rights complaint against the same defendants, based upon the same operative facts. The court dismissed that complaint under 28 U.S.C. § 1915(d) for lack of any arguable merit. Addenda D, E, F and G.

SUMMARY OF THE ARGUMENT

The trial court did not abuse its discretion in dismissing Thomas's complaint for failure to state a claim upon which relief may be granted without granting Thomas leave to amend. Thomas was on notice of the deficiencies in his complaint and had more than ample opportunity to amend his complaint before the dismissal was entered. In addition, this was at least the second attempt of Thomas to frame a cognizable claim for the violation of his federal civil rights, his previous federal action having been dismissed for lack of any arguable merit. In any event, Thomas's claims related to the conduct of hearings by the Board of Pardons,

in which Thomas has no federal constitutional rights and over which the Utah Attorney General has no authority or control. Thus, he could not possibly state a valid claim for the violation of his federal civil rights against the Utah Attorney General and his complaint was therefore properly dismissed. The order of dismissal below should be affirmed.

ARGUMENT

POINT I

THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN DISMISSING THOMAS'S COMPLAINT WITHOUT LEAVE TO AMEND

Thomas appears to contend that the trial court abused its discretion in dismissing Thomas's complaint rather than allowing him the opportunity to amend.³ Federal courts have held that a plaintiff should ordinarily be given leave to amend a complaint to correct any deficiencies in pleading. See, e.g., Branum v. Clark, 927 F.2d 698, 704-05 (2d Cir. 1991); Eldridge v. Block, 832 F.2d 1132, 1135-36 (9th Cir. 1987). Where the plaintiff is pro se, the opportunity to amend should be given "at least once when a liberal

³Thomas also claims that the court should have required him to provide a more definite statement. A more definite statement rather than a dismissal is warranted "[w]here the complaint states a claim in general language but is not sufficiently definite in certain respects to enable defendant to answer." Liquor Control Comm'n v. Athas, 121 Utah 457, 243 P.2d 441, 443 (1952). Thomas's complaint here, however, was not sufficiently comprehensible to withstand a motion to dismiss; therefore a more definite statement was not appropriate. Id. ("We are of the opinion that both motions cannot consistently be granted, for it is only when a complaint states a claim that a motion under Rule 12(e) can be properly considered. If a complaint does not state a claim upon which relief can be granted, no responsive pleading is required and any further attack upon the pleading is useless.")

reading of the complaint gives any indication that a valid claim might be stated." Branum, 927 F.2d at 705. See also Eldridge, 832 F. 2d at 1135-36 (amendment should be allowed "unless it is clear that they [the deficiencies] cannot be overcome by amendment").

Under the circumstances of this case, however, it was not an abuse of discretion simply to dismiss the complaint. The Attorney General's motion to dismiss gave Thomas notice of the deficiencies in his pleading. In response, Thomas chose to stand on his complaint and did not request any additional time to file an amended complaint. R. 54. Nearly two months elapsed between the time the Attorney General filed the motion to dismiss and the entry of the order of dismissal. Under Rule 15 of the Utah Rules of Civil Procedure, Thomas could have amended his complaint as a matter of right at any time before a responsive pleading was served. However, he made no attempt to do so.

Moreover, this action was at least the second attempt by Thomas to state a valid federal civil rights claim based upon the same operative facts. This Court may take judicial notice that Thomas previously sued these same defendants and made essentially the same allegations against them in Thomas v. Angerhofer, No. 91-C-1283S (D. Utah) (see copy of complaint attached to this Brief as Addendum G). See Utah R. Evid. 201; Moore v. Estelle, 526 F.2d 690, 694 (5th Cir.) (court of appeals may take judicial notice of prior actions filed by habeas corpus petitioner even though not made part of the record on appeal), cert. denied, 426 U.S. 953 (1976). Cf. Duhart v. Carlson, 469 F.2d 471, 473 (10th Cir. 1972)

(district court could take judicial notice of its own records of prior class actions of plaintiffs which were dismissed as frivolous), cert. denied, 410 U.S. 958 (1973); Ringwood v. Foreign Auto Works, Inc., 786 P.2d 1350, 1357 (Utah App.) (trial court properly took judicial notice of proceedings in prior case for purpose of determining res judicata effect), cert. denied, 795 P.2d 1138 (1990).

As stated in the Report and Recommendation of the magistrate in Thomas's prior action:

Plaintiff's complaint arises mainly from decisions made by the Utah State Board of Pardons. He complains of not being provided with an attorney at parole eligibility hearings. He also complains of allegedly not being given credit for time served and that the board of pardons failed to follow established rules and procedures which included failing to follow the sentencing matrix applicable to his crime. The plaintiff asserts that Department of Corrections Caseworkers Andrew Hunt and Vickie Bridwell failed to obtain on his behalf a hearing with the Board of Pardons and that this violated his civil rights.

Thomas v. Angerhofer, No. 91-C-1283S (D. Utah), Report and Recommendation dated March 9, 1992 at 3 (attached to this Brief as Addendum D). In the federal case, as in this case, Thomas sought to hold the Utah State Attorney General responsible for the Board of Pardons' conduct because "VanDam has failed to respond to his [Thomas's] letters." Id. at 5. Compare Thomas's Complaint in this case ("Plaintiff wrote letters to defendant [Van Dam], notifying him of credit time served which he ignored and also informed him of

misinformation." R. 12 (Complaint, ¶ 23)).⁴

Three months before Thomas filed his complaint in this case, the federal district court dismissed Thomas's civil rights complaint under 28 U.S.C. § 1915(d) on the ground that his claims had no arguable merit. Thomas v. Angerhofer, No. 91-C-1283S (D. Utah). The dismissal was based on a thorough Report and Recommendation (attached as Addendum D) and accompanied by a detailed written order (attached as Addendum E). Thus, when Thomas filed his complaint in this case, the deficiencies in his federal civil rights claims had been previously explained to him in detail by the federal district court. Those deficiencies were not corrected in his complaint in this case. The dismissal of Thomas's federal case was affirmed by the United States Court of Appeals in Thomas v. Angerhofer, No. 92-4072, slip op. (10th Cir. December 8, 1992), attached as Addendum F to this Brief.⁵

In any event, even a liberal reading of Thomas's

⁴In the federal case, Thomas omitted R. Paul Van Dam and Peter Haun from the caption of the complaint, but included them both in the body of the complaint. In addressing Thomas's allegations in that case, the federal court considered both Van Dam and Haun named defendants. See Thomas v. Angerhofer, No. 91-C-1283S (D. Utah), Report and Recommendation dated March 9, 1992 at 1 (attached to this Brief as Addendum D). Thus, the parties in the federal case were identical to those named in this case, except that in the federal case Thomas also sued two more defendants (David J. Angerhofer and Dean Sheffield).

⁵Under federal law, the res judicata effect of a dismissal under 28 U.S.C. § 1915(d) is arguably limited to future frivolousness determinations in in forma pauperis proceedings. See Denton v. Hernandez, ___ U.S. ___, 112 S. Ct. 1728, 1734 (1992) (dictum). It is cited here for the purpose of establishing that Thomas has been afforded other opportunities to frame cognizable claims based on the same incidents referred to in his complaint in this case.

complaint gives no reason to believe that there is a valid basis for a claim against the Attorney General for the violation of Thomas's federal civil rights; nor has Thomas offered any such reason in his brief on appeal.

Thomas seems to complain that the Attorney General was in some way responsible for the alleged failure of the Board of Pardons to grant Thomas credit for time served in determining his eligibility for parole and to afford him procedural due process protections in parole hearings in accordance with the Utah Supreme Court's decision in Foote v. Utah Board of Pardons, 808 P.2d 734 (Utah 1991) (holding due process protections of Utah Constitution apply to Board of Pardons proceedings).

For at least two reasons, Thomas cannot possibly amend his complaint to state a cognizable claim against the Attorney General for the violation of his federal civil rights in a parole hearing. First, Thomas has no federal due process protection in Utah parole proceedings. Dock v. Latimer, 729 F.2d 1287, 1289-92 (10th Cir.), cert. denied, 469 U.S. 885 (1984); Houtz v. Deland, 718 F. Supp. 1497, 1502 (D. Utah 1989). This is true despite the state constitutional procedural protections recognized by the Utah Supreme Court in Foote v. Board of Pardons, 808 P.2d 734 (Utah 1991). See Jacobs, Visconsi & Jacobs, Co. v. City of Lawrence, 927 F.2d 1111, 1116-19 (10th Cir. 1991) (state procedural protections do not create federal due process interests unless they place substantive limits on discretion of decisionmaker); Campbell v. Mercer, 926 F.2d 990, 993 (10th Cir. 1991) (same); West Farms

Assocs. v. State Traffic Comm'n, 951 F.2d 469, 472 (2d Cir. 1991) ("the Due Process Clause does not protect against the deprivation of state procedural rights"), cert. denied, ___ U.S. ___, 112 S. Ct. 1671 (1992). Thus, even if the Attorney General had some role in the conduct of Board of Pardons hearings and the resulting decisions concerning Thomas's eligibility for parole, Thomas has no valid federal civil rights claim against either the Board of Pardons or the Attorney General.

Secondly, to state a valid civil rights claim, Thomas must allege affirmative conduct creating a causal link between the named defendant and the alleged constitutional violation. See Rizzo v. Goode, 423 U.S. 362, 373-78 (1976) (reversing injunction against Philadelphia mayor, police commissioner and other city officials for alleged civil rights violations arising from series of incidents of illegal and unconstitutional mistreatment of citizens by city police officers where defendants played no affirmative part in depriving members of plaintiff classes of any constitutional rights, but merely failed to act in the face of a pattern of violations). Here, however, the Attorney General has no authority or control over the conduct of Board of Pardons proceedings; nor could the Attorney General voluntarily assume such responsibility. See Meade v. Grubbs, 841 F.2d 1512, 1528 (10th Cir. 1988) (dismissing state officials, including attorney general, from civil rights complaint where "[n]one of these officials has any statutory authority over the [allegedly unconstitutional] conduct of deputy sheriffs" and the plaintiff did not allege that

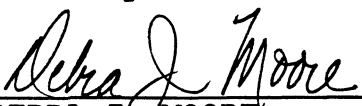
any of them voluntarily assumed such responsibility). Thus, the necessary causal nexus between the Attorney General and the alleged violations of Thomas's rights by the Board of Pardons does not exist.

CONCLUSION

For the reasons discussed above, this Court should affirm the judgment of dismissal below.

DATED this 16th day of April, 1993.

JAN GRAHAM
Attorney General

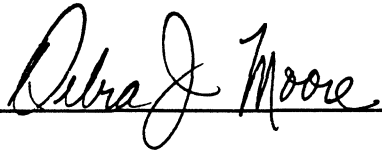


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CERTIFICATE OF SERVICE

I hereby certify that I mailed ^{two} a true and correct copy ^{us} of the foregoing **BRIEF OF APPELLEE**, postage prepaid, this 19th day of April, 1993 to the following:

Richard Dee Thomas
Utah State Prison
P.O. Box 250
Draper, UT 84020



ADDENDUM A

UTAH RULES OF EVIDENCE, RULE 201

ARTICLE II.
JUDICIAL NOTICE.

Rule 201. Judicial notice of adjudicative facts.

(a) **Scope of rule.** This rule governs only judicial notice of adjudicative facts.

(b) **Kinds of facts.** A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

(c) **When discretionary.** A court may take judicial notice, whether requested or not.

(d) **When mandatory.** A court shall take judicial notice if requested by a party and supplied with the necessary information.

(e) **Opportunity to be heard.** A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken.

(f) **Time of taking notice.** Judicial notice may be taken at any stage of the proceeding.

(g) **Instructing jury.** In a civil action or proceeding, the court shall instruct the jury to accept as conclusive any fact judicially noticed. In a criminal case, the court shall instruct the jury that it may, but is not required to, accept as conclusive any fact judicially noticed.

§ 1915. Proceedings in forma pauperis

(a) Any court of the United States may authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees and costs or security therefor, by a person who makes affidavit that he is unable to pay such costs or give security therefor. Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that he is entitled to redress.

An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith.

(b) Upon the filing of an affidavit in accordance with subsection (a) of this section, the court may direct payment by the United States of the expenses of (1) printing the record on appeal in any civil or criminal case, if such printing is required by the appellate court; (2) preparing a transcript of proceedings before a United States magistrate in any civil or criminal case, if such transcript is required by the district court, in the case of proceedings conducted under section 636(b) of this title or under section 3401(b) of title 18, United States Code; and (3) printing the record on appeal if such printing is required by the appellate court, in the case of proceedings conducted pursuant to section 636(c) of this title. Such expenses shall be paid when authorized by the Director of the Administrative Office of the United States Courts.

(c) The officers of the court shall issue and serve all process, and perform all duties in such cases. Witnesses shall attend as in other cases, and the same remedies shall be available as are provided for by law in other cases.

(d) The court may request an attorney to represent any such person unable to employ counsel and may dismiss the case if the allegation of poverty is untrue, or if satisfied that the action is frivolous or malicious.

(e) Judgment may be rendered for costs at the conclusion of the suit or action as in other cases, but the United States shall not be liable for any of the costs thus incurred. If the United States has paid the cost of a stenographic transcript or printed record for the prevailing party, the same shall be taxed in favor of the United States.

(June 25, 1948, ch 646, § 1, 62 Stat. 954; May 24, 1949, ch 139, § 98, 63 Stat. 104; Oct. 31, 1951, ch 655, § 51 (b), (c), 65 Stat. 727; Sept. 21, 1959, P. L. 86-320, 73 Stat. 590; Oct. 10, 1979, P. L. 96-82, § 6, 93 Stat. 645.)

§ 1981. Equal rights under the law

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

(R. S. § 1977.)

(AMENDED NOV. 21, 1992)

§ 1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

(R. S. § 1979; Dec. 29, 1979, P. L. 96-170, § 1, 93 Stat. 1284.)

(3) Depriving persons of rights or privileges. If two or more persons in any State or Territory conspire, or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws, or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice-President, or as a member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators.

(R. S. § 1980.)

§ 1986. Action for neglect to prevent conspiracy

Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in the preceding section [42 USCS § 1985], are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action, and if the death of any party be caused by any such wrongful act and neglect, the legal representatives of the deceased shall have such action therefor, and may recover not exceeding five thousand dollars damages therein, for the benefit of the widow of the deceased, if there be one, and if there be no widow, then for the benefit of the next of kin of the deceased. But no action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued.

(R. S. § 1981.)

ADDENDUM B

92 148 0034
IMP

RICHARD AEE THOMAS
Attorney Pro Se
Utah State Prison
P.O. Box 250
Angels, Utah 84020

THIRD DISTRICT COURT
THIRD JUDICIAL DISTRICT

JUL 30 1992

SALT LAKE COUNTY
Lu Ann B. Hanks
Deputy Clerk

IN THE THIRD JUDICIAL DISTRICT COURT, SALT LAKE COUNTY
STATE OF UTAH

RICHARD AEE THOMAS,
Plaintiff

v.

PETE HAIN, DONALD BLANCHARD,
PAUL LARSON, MICHAEL SIBBETT,
PAUL BOYDEN, VICTORIA PALACIOS,
HEATHER COOKE, ENZO OPINO,
PAUL SHEFFIELD; INDIVIDUALLY AND AS
EMPLOYEE(S) + MEMBERS UTAH BOARD OF PAROONS;
JAMES S. SANAYIA; INDIVIDUALLY AND AS
EMPLOYEE THIRD DISTRICT COURT JUDGE;
R. PAUL VAN DAM, INDIVIDUALLY AND AS EMPLOYEE
UTAH ATTORNEY GENERAL; ANDREW HUNT &
VICKIE BRIDWELL, INDIVIDUALLY AND AS
EMPLOYEE(S) UTAH STATE PRISON / DEPARTMENT OF
CORRECTIONS;

DEFENDANTS.

CIVIL-SUIT COMPLAINT
COMMON-LAW TORT

"Respondent Superior"

42 U.S.C. 1983, 42 U.S.C. 1981
42 U.S.C. 1985(3) 42 U.S.C. 1986

FTCA, INSTINCTIVE RELIEF
ADMINISTRATIVE PROCEDURE ACT

JURY DEMAND

PERSONAL INVOLVEMENT, DISCRIMINATION

Case No. 92090419-

JUDGE:

JUDGE J. DENNIS FREDERICK

CV

A. JURISDICTION

1. UTAH RULES OF CIVIL PROCEDURE Rule 82, is invoked
so, Jurisdiction and Venue are affected.
2. PLAINTIFF ALSO INVOKES THE "PENDENT JURISDICTION" OF
THIS COURT. 30 Jones v. Diamond, 636 F.2d 1364, 1379 (5th Cir 1980) (en banc)
(pendent state claim governed by state law limiting liability). STATE STATUTE
and COMMON LAW WERE VIOLATED WHEN MEMBERS OF UTAH BOARD OF PAROONS
did not provide STATE LAW, of awarding Credit Time Served and
failure to take corrective measures, to include Prison Officials
failed to care for Plaintiffs, STATE AND CONSTITUTIONAL RIGHTS
by being negligent in providing adequate STATE LAW. 22 Sup. App. Ct. Cases
24-442, "The District of Columbia shall... be responsible for the
safe keeping, care, protection... of all persons committed to its prison."
0002

See also Matthews v. District of Columbia, 387 A.2d 731 (D.C. Ct. App. 1978) (common-law tort case).

3. Under FTCA, 443 F. Supp. 202, 216 (N.D. Cal. 1977) (qualified immunity not available under FTCA).

4. Plaintiff, has Exhausted Administrative Procedures.

B. PARTIES

5. Plaintiff, Richard Lee Thomas, is a citizen of UTAH, presently resides at the Utah State Prison, at Post Office Box 250, Draper, Utah 84020.

6. Defendant, Patz Hahn, is a citizen of Utah, and is employed as CHAIRMAN/ADMINISTRATOR of the UTAH BOARD OF PARONS. At the time the claims alleged in this complaint arose, this defendant was acting under color of STATE LAW in that he is the -Chairman/ Administrator, for the Utah Board of Pardons.

7. Defendant, Donald Blanchard, is a citizen of Utah, and is employed as a member of the UTAH BOARD OF PARONS. At the time the claims alleged in this complaint arose, this defendant was acting under color of STATE LAW in that he is a Member for the Utah Board of Pardons.

8. Defendant, Paul Larson, is a citizen of Utah, and is employed as Hearing Officer - "Rescission" of the UTAH BOARD OF PARONS. At the time the claims alleged in this complaint arose, this defendant was acting under color of STATE LAW in that he is Member for the Utah Board of Pardons.

9. Defendant, Michael Sibbath, is a citizen of Utah, and is employed as a Member of the UTAH BOARD OF PARONS. At the time the claims alleged in this complaint arose, this defendant was acting under color of STATE LAW in that he is a Member for the Utah Board of Pardons.

10. Defendant, Paul Boyden, is a citizen of Utah, and is employed as a member of the UTAH BOARD OF PAROONS. At the time the claims alleged in this complaint arose, this defendant was acting under color of STATE LAW in that he is a member for the Utah Board of Paroons.

11. Defendant, Victoria Palacios, is a citizen of Utah, and is employed as a member of the UTAH BOARD OF PAROONS. At the time claims alleged in this complaint arose, this defendant was acting under color of STATE LAW in that she is a member for the Utah Board of Paroons.

12. Defendant, Heather Cooke, is a citizen of Utah, and is employed as a member of the UTAH BOARD OF PAROON. At the time the claims alleged in this complaint arose, this defendant was acting under color of STATE LAW in that she is a member for the Utah Board of Paroons.

13. Defendant, Enid Opino, is a citizen of Utah, and is employed as a member of the UTAH BOARD OF PAROONS. At the time the claims alleged in this complaint arose, this defendant was acting under color of STATE LAW in that she is a Hearing Officer for the Utah Board of Paroons.

14. Defendant Paul She Field is a citizen of Utah, and is employed as a member of the UTAH BOARD OF PAROONS, as Executive Administrator. At the time the claims alleged in this complaint arose, this defendant was acting under color of STATE LAW in that he is the Executive Administrator for the Utah Board of Paroons.

15. Defendant, James S. Sawyer, is a citizen of Utah, and is employed as a UTAH THIRD DISTRICT COURT JUDGE. At the time the claims alleged in this complaint arose, this defendant was acting under color of STATE LAW in that he is the Judge of Utah Third District Court.

16. Defendant, R. Paul Van Dam, is a citizen of Utah, and is employed as the UTAH ATTORNEY GENERAL. At the time the claims alleged in this complaint arose, this defendant was acting under color of STATE LAW in that he is

the Attorney General for Utah.

17. Defendant Andrew Hunt is a citizen of Utah and is employed as a Caseworker at the UTAH STATE PRISON / DEPARTMENT OF CORRECTIONS. At the time the claims alleged in this complaint arose, this defendant was acting under color of STATE LAW in that he is the Caseworker for Utah State Prison.

18. Defendant Vickie Bridwell is a citizen of Utah and is employed as the ETHNIC MINORITY RESOURCE SPECIALIST at the UTAH STATE PRISON / DEPARTMENT OF CORRECTIONS. At the time the claims alleged in this complaint arose, this defendant was acting under color of STATE LAW in that she is the E.M.R.S for the Utah State Prison.

C. NATURE OF CAUSE

19. On or about October 18th 1990, Defendant Enid Opino, Utah Board of Pardons, RESCISSION HEARING OFFICER, sent Plaintiff RICHARD AEE THOMAS, a Notice that he was scheduled to appear at Hearing. No Seven day prior notice, or what hearing was for, nor was he allowed counsel.

Which denied, "PROCEDURAL DUE PROCESS"

Arbitrariness and Unfairness, Plaintiff's STATE CLAIM. To include the Due Process Clause of the Fifth and Fourteenth Amendment prohibit federal and State officials, from depriving you of "life, liberty or property without due process of law."

As to plaintiff having counsel at RESCISSION HEARING, see Lanier v. Fair, 876 F.2d 243, 263 (1st Cir. 1989) (parole board members entitled to qualified immunity with respect to rescission of reserve parole date).

2476. Nel P. 418 U.S. at 559-62; see Green v. McCall, 822 F.2d 284, 290-92 (2d Cir. 1987) (due process requires that inmate with parole date be allowed representation by counsel, opportunity to call and cross-examine witnesses, and de novo hearing into charges before release date changed);

1986. See Aggnon v. Scarpelli, 411 U.S. 778, 790 (1973) (right to counsel required by fundamental fairness in certain parole revocation proceedings); cf. Damiano v. Florida Parole & Probation Comm'n, 785 F.2d 929, 932 (11th Cir. 1986) (no right at hearings that determine rather than revoke parole). Also see Lanier v. Fair, 876 F.2d 243, 252-53 (1st Cir. 1984) (language in regulation limiting reversion of assigned reserve parole date created liberty interest in date). Members Larson, Sibbett, members and defendants - conducted HEARING without Plaintiff's, FILE. HALL, Chairman/Administrator, upheld decision upon plaintiff with knowledge of Concurrent Sentence given by Third District Court Judge PHILIP PALMER. Plaintiff had served NINE MONTHS (9), of Concurrent Sentence, when UTAH BOARD OF PAROLES, et al, members violated United States and Utah Constitutions, DOUBLE JEOPARDY. Although a sentence lacks Constitutional finality, modification may nonetheless raise double jeopardy concerns. 1586 Compare U.S. v. Turians, 626 F.2d 142, 144 n.1 (9th Cir. 1980) (double jeopardy violated when probation revoked after revocation of defendant's background based on information known to court prior to sentencing). Since the UTAH SUPREME COURT in James Carlos Foutz v. UTAH BOARD OF PAROLES, et al, and members CASE No. 90032 made Board of Paroles, decisions - APPEAL-ABLE to Utah District Courts. IN ESSENCE, Board of Paroles is a COURT. 1587. See U.S. v. Benz, 282 U.S. 304, 307 (1931) (dictum) (double jeopardy forbids imposing greater sentence after defendant has begun serving first sentence). Defendants, HALL, Sibbett, Blanchard, Cook, Larson, and, Opino, heightened expiration date on Plaintiff's D-5 Concurrent Sentence, to which, Members of Board of Paroles are in violation of, see U.S. v. Arrillano-Rios, 799 F.2d 520, 524-25 (9th Cir. 1986) (double jeopardy forbids increasing sentences for aiding and abetting drug crimes on remand after reversal weapons conviction when defendant had fully served original sentence). Plaintiff's crime is, Attempted Distribution. U.S. v. Earley, 816 F.2d 1428, 1434 (10th Cir. 1987) (an ban) (double jeopardy forbids imposing consecutive sentences after defendant had served five months because courts failure to specify whether sentences consecutive or concurrent, presumptively renders sentences concurrent); U.S. v. Jones, 722 F.2d 632, 638-39 (11th Cir. 1983) (double jeopardy forbids resentencing defendant when court mislabeled stated factual matters and defendant had begun serving sentence unless statute explicitly provides for modification);

20. Hawn, Boyden, Palacios, Sheffield, Larson, and Cooke, Opino, and Blanchard, Defendants and Utah Board of Pardons members, Under 42 U.S.C. 1985(3), Private conduct is actionable, which provides for damage actions against persons who "conspire... for the purpose of depriving... any person or class of persons of the EQUAL PROTECTION of the LAWS or of equal privileges and immunities under the laws" Utah Board of Pardons, refused TWICE, to Credit Time Served, But see U.S. v. Chalkers, 915 F.2d 1254 1258 (9th Cir. 1990) (Congress intended through change in statutory language to give Attorney General and district courts concurrent authority to grant credit for time served), Plaintiff invokes, 42 U.S.C. 1986, which provides for damage liability for anyone "who, having knowledge that [a 1995 conspiracy is] about to be committed and having power to prevent aid in preventing the commission of the same, neglects or refuses to do so..." 33 Griffin v. Breckenridge, 403 U.S. 88, 91 S.Ct. 1790 (1971).

District Court Judge, Richard Moffatt, Credited Fourteen Months when sentencing Plaintiff in November 1988, see Commitment papers, and defense attorney - Debra H. Loy, Esq., letter to Utah Board of Pardons, to include Board's, Policy R655-205. Credit for Time Served, R655-205-1. Policy R655-205-2. Procedure.

"Effective July 15, 1987 an offender shall be granted credit toward imprisonment for any time spent in official detention on the crime of" That is Utah STATE. "This requirement applies whether detention results from the offense for which the sentence was imposed."

Federal Law is, UTAH RULES OF EVIDENCE, Rule 302, Applicability of Federal Law in civil actions and proceedings, Presumptions in criminal cases are not treated in this rule. See Utah Code Annotated, Section 76-1-503 (1953) or any subsequent revision of that section.

The above occurred July 1989, Board of Pardons knew their own rules. RACIAL DISCRIMINATION when Board of Pardons Credit Time Served to "WHITE OFFENDERS" Nick Deal, Steve Hanlin, Anthony Hand, and many other white inmates past and present.

Applying the decision in Smith v. Wade, 461 U.S. 30 (1983), to a 1981 intentional racial discrimination claim for punitive damages if racial discrimination result of malice or callous and reckless indifference.

34 Id., 403 U.S. at 101. "If an incarcerated person committed her offense prior to November 1, 1981, she must be given credit towards the service of her prison term for any time spent in custody²²⁴ in connection with the crime for which the sentence is imposed." 18 U.S.C. 3568 (1982) (repealed 1984, effective 1987). Defendant Palacios - was aware and intentionally, knowingly disregarded, U.S. Constitution requirements, and policy, custom and practice, regulation, statute, "imposes a duty on someone, failure to perform it may make that person or persons liable even if she does not know about the resulting constitutional violation." 225 *Tatum v. Hooper*, 642 F.2d 253 (8th Cir. 1981); *De v. New York City Dept. of Social Services*, 649 F.2d 134 (2d Cir. 1981); *Johnson v. Duffy*, 588 F.2d 740 (9th Cir. 1978); *United States ex M. Larkins v. Oswald*, 510 F.2d 583, 589 (2d Cir. 1975). Since the violations of state, federal, statutes by EMPLOYEE, INDIVIDUALS and officials will defeat qualified immunity; 197 *Harlow v. Fitzgerald*, *supra* note 184, at 2739; *Scott v. Plank*, 691 F.2d 634 (3d Cir. 1982); *Williams v. Tread*, 671 F.2d 892 (5th Cir. 1982). These defendants have violated "clearly established" rights. *Harlow v. Fitzgerald*, 457 U.S. 800, 818, 102 S.Ct. 2727 (1982). In *Anderson v. Crighton*, 483 U.S. 635, 107 S.Ct. 3034 (1987), the Court addressed what "clearly established" means stating: The contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right. That is not to say that an official action is protected by qualified immunity unless the very action in question has previously been held unlawful... but it is to say in the light of preexisting law the unlawfulness must be apparent. The Supreme Court made it clear years ago that a state official who violates the Constitution is "stripped of his official or representative character and is subject in his person to the consequences of his individual conduct" even if the official is enforcing a state statute. *Mallo v. Harper*, 912 F.2d 628, 636-37 (3d Cir. 1990); *Faria v. Smith*, 850 F.2d 917, 920-23 (2d Cir. 1988). STATE COURT hearing 42 U.S.C. § 1983 36 *Cooper v. Morin*, 49 N.Y.2d 69, 73 (N.Y. 1979).

21. Defendant, James S. Savaya, Third District Court Judge

Suspended the WRIT OF HABEAS CORPUS. "Plaintiff at this time invokes prayer for INSTANTIVE RELIEF" This defendant violated Utah Supreme Courts "Opinion-Ruling" Foot v. Utah Board of Pardons and members, Case No. 900132 that inmates at the Utah State Prison may appeal Board of Pardons decisions by Petition of Writ of Habeas Corpus to which Sawaya violated U.S.C. Article I Section 9 paragraph 2, by not acknowledging the purpose of Writ of Habeas Corpus. "The Privilege of the Writ of Habeas Corpus, Shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it." To include, Utah State Constitution, Article I Section 5, to include Sections 10, 11, and 12. Defendant Sawaya violated Utah Rules of Civil Procedure 65B and Revised, since Plaintiff filed his Writ of Habeas Corpus, July 30th 1991 and defendant never applied U.S. Constitution, 9th or Utah laws of granting hearing, presence of Petitioner. Stinner v. Turner, 20 Utah 2d 148, 434 P.2d 753 (1967). Defendant also denied plaintiff's Cruel and Unusual, in Habeas Corpus. Ziegler v. Miliken, 583 P.2d 1175 (Utah 1978). To include, Double jeopardy violations to be raised by Habeas Corpus under this rule, McNair v. Hayward, 666 P.2d 787 (Utah 1983). Failure to apply new statutory interpretations retroactively... claims qualify for review under Subdivision (i) of this rule. Andrews v. Morris, 667 P.2d (Utah 1983). Defendant Sawaya dismissed Plaintiff's Habeas Corpus after committing Judicial Misconduct, Communicating improperly with only one side to a proceedings. Then dismissed on a "Unsigned Minute Entry" Unsigned minute entry did not constitute an entry of judgment, nor was it a final judgment for purposes of appeal. Wilson v. Manning, 645 P.2d 655 (Utah 1982). Utah State Tax Comm'n v. Kirkson, 714 P.2d 1157 (Utah 1986). Satter v. Gross, 727 P.2d 212 (Utah 1986). Ahlstrom v. Anderson, 723 P.2d 979 (Utah 1986). An unsigned minute entry does not constitute a final order for purposes of appeal. State v. Crowley, 737 P.2d 198 (Utah 1987). ALSO NINE PROCESS violations of the Federal Constitution, Graham v. Richardson 403 U.S. 365 (1971).

Savaya failed to administer judicial procedures afforded Plaintiff Estelle v. Gamble, 429 U.S. 97, 106, 97 S. Ct. 285 (1976) "acts of Omissions", Bogard v. Cook, 586 F.2d 399 (5th Cir. 1978) (nonfeasance as well as misfeasance "actionable").

22. Again defendants, Hawn, Sibbett, Blanchard, Cook, Larson, on or about Nov. 1991, members of Board of Pardons, held a "Special-Recid termination" and denied Credit for Time Served. To include defendants made Plaintiff suffer Cruel and Unusual Punishment, Mental Distress, and loss of earning capacity since the Eighth Amendment protects a prisoners interests in bodily integrity, peace of mind, and ability to earn. See v. District of Columbia, 544, Hudson v. McMillian. The double jeopardy clause guarantees protection against a second prosecution for same offense after a conviction; and protection against multiple punishments for the same offense. 1424, Justices of Boston Mun. Court v. Lyden, 466 U.S. 294, 306-D (1984) (dictum). Also defendants are in violation of utilizing Guidelines at Hearings, according to Utah Sentencing and Release Guidelines, and Utah Supreme Court, Board of Pardons, "if the Board feels differently about these circumstances than the court, they should notify the court of the reason for disagreement and action taken by board." Which defendants did not do when, MATRIX, under poor 18 months, Board gave 36 months did not Credit 14 months Judge Ordered nor 9 months spent waiting for Board hearing, and 4 more Board added on a Class A misdemeanor concurrent after Judge Palmer sentenced to determinate Sentence. See Utah Supreme Court Opinion Case No. 900132, Foot v. Utah Board of Pardons, and members. Rescission hearing was in violation, because Board did not allow Plaintiff Counsel, 2973, Wolff, 418 U.S. at 559-62; See Green v. McCall, 822 F.2d 284, 290-92 (2d Cir. 1987) (due process requires that inmate with parole date be allowed representation by counsel, opportunity to call and cross-examine witnesses, and de novo hearing into charges before release date changed).

23. Defendant, R. Paul Van Dam is the Utah Attorney General who is in violation of plaintiff's Constitutional Right to Credit time served. The attorney general initially determines credit time served as part of the execution of sentence ²²⁴² 2242 18 U.S.C. 3568 (1982) (repealed 1984 effective 1987). Judicial review of the execution of a sentence is available only through a Habeas Corpus petition under 28 U.S.C. 2241 (9) see Hanahan v. Luther, 706 F.2d 148, 151 (7th Cir. 1985). Utah Court of Appeals - Remitted back to Utah Third District Court. see 2244, Compton U.S. v. Henry, 711 F.2d 113, 114-15 (8th Cir. 1983) (per curiam) (defendant entitled to credit for time served in state custody when denial of release on bail due to outstanding federal detainer). Plaintiff had no detainer. This is a U.S. Constitutional Rule, which makes it a Constitutional violation. Furthermore in Monell v. New York City Dep't. of Social Services, 436 U.S. 658, 98 S.Ct. 2018. Plaintiff also alleges, "A prisoner has standing to maintain an action under 42 U.S.C. 1981 for deprivation of his Civil Rights based on Race. Tolbert v. Evans (1970 CA9 Ariz.) 434 F.2d 625. To include a prisoner has standing to sue under 42 U.S.C. 1985 (3) for a conspiracy to interfere with plaintiff's civil rights. Jenks v. Henry, (1967 CA9 Wash.) 378 F.2d 334] which this defendant did, knowingly and intentionally, with all defendants to which he has, deprived of Liberty, Immunities, Rights. In such case the prisoner has standing to sue a person even if not a member of a class against which the defendants discriminated in a deprivation of federal civil rights. Nakot v. Harlip, (1958 CA 11) 253 F.2d 54. Attorney General was aware, had knowledge that a conspiracy is about to be committed, and having the power to prevent or aid in preventing the commission of the same, neglect or refuses to do so... 33 Briffin v. Breckenridge, 403 U.S. 88, 91 S.Ct. 1790 (1971). Plaintiff is a Black Afro-American, Prisoner and class based upon LITAF SUPREME COURT'S "Opinion" No. 90032 for prisoners could appeal Board of Pardons, ~~has~~ decisions to Third District Court, in which ANY and ALL Petitions concerning LITAF BOARD OF PARDONS has been dismissed in favor of Utah State. 34 Id. 403 U.S. at 101. Plaintiffs REMITTITUR from Utah Court of Appeals Case No 910693-CA, Third Dist. Court # 910904848 HC. To which defendant is IGNORING.

Also Plaintiff alleges violations against defendant Van Nam under 42 U.S.C. 1983, statute in 1980 Civil Rights of Institutionalized Persons Act, 139 42 U.S.C. 1991a (1976 ed., Supp. IV), to which he has not done. The grievance system at the Utah State Prison is not certified. Still Plaintiff has exhausted administrative procedures against all named defendants, but to include as violation against defendant Van Nam, Agencies are required to follow their own rules, and courts will enforce that duty. See Ruiz v. Estelle, 503 F. Supp. 1265, 1356-57, 1185 (S.D. Tex. 1980), aff'd in part and mod. in part, 679 F.2d 1115 (5th Cir. 1982). Plaintiff wrote letters to defendant notifying him of credit time served which he ignored and also informed him of misinformation. 140 Paine v. Baker, 595 F.2d 197 (4th Cir. 1979); Doe v. United States Civil Service Commission 483 F. Supp. 539 (S.D. N.Y. 1980) (same rule in government employment case). To invoke the Pendent Jurisdiction in Pannhurst State School & Hospital v. Halderman, 465 U.S. 89, 104 S.Ct. 900 (1984). Spidel v. Commonwealth of Pa., Office of Budget, 660 F. Supp. 941, 943 (M.D. Pa. 1988) (individual capacity tort claims could be heard); Nirvin v. New York State Office of Mental Health, 665 F. Supp. 1034, 1039 (E.D. N.Y. 1987) (individual capacity claims could be heard); Balabin v. Sealy, 606 F. Supp. 176, 184 (S.D. N.Y. 1985) (conversion claim could be heard). "The practical effect of Pannhurst is that in injunctive cases, you must bring separate lawsuits in state and federal courts if you want to raise violations of state law as well as federal law. You have to do this in damage cases as well, but the law is not yet clear." The Pannhurst decision only affects suits against state officials and employees. It is also limited to claims based on state law; it does not limit federal law claims against anyone. The Plaintiff also alleges that defendant, as a "person occupying" responsible public office(s) are expected to have "knowledge of the basic unquestioned constitutional rights of [their] charges." 181 Wood v. Strickland, 420 U.S. 308, 321-22, 95 S.Ct. 992 (1975). Knowledge and acquiescence for liable for later events for not correcting the problem. Time served, not credited upon notice. 218 Strickland v. Ashe, 548 F. Supp. 1193 (D. Mass. 1982).

24. Defendants Hunt and Bridwell, denied the Plaintiff a Constitutionally based Liberty interest, "a right generally must be one that is actually enjoyed at the present time." Utah Board of Pardons Rule R. 655-311 Redeterminations and Special Attentions which becomes a Constitutional Right under the Fourteenth Amendment, Equal Protection, and now apply to State Officials as well. Only by way of the Fourteenth Amendment Due Process Clause, Duncan v. Louisiana, 391 U.S. 145, 147-48 88 S.Ct. 1444 (1968), these rights are sometimes referred to as part of "substantive due process" as well. Poythres v. Duncan, 103 S.Ct. 368 (1982). Defendants job descriptions as Employees of Utah Department of Corrections and classifications regulations "State any and all inquiries, placements, advancements, HEARING REQUESTS, must be initiated or approved of Social Work or Ethnic Minority Resource Specialist, who is Liaison for Administration in which, BOTH refused to follow regulations to procure Board of Pardons Hearing to receive Credit Time Served, after showing Judges Order and Regulation of Board of Pardons. Which caused plaintiff the loss of 27 months Credit Time Served. The Supreme Court has held that, State-created liberty or property interests may be found in "statutes or other rules..." 27 Connecticut Board of Pardons v. Dumschat, 452 U.S. 458, 465, 101 S.Ct. 2460 (1981). To include violations to plaintiff of KNOWLEDGE OR AQUIESCENCE, PERSONAL INVOLVEMENT, Finally, courts have held that personal knowledge and acquiescence may be established where a "series of incidents" or practices or events so widespread, frequent, and prevalent as to constitute regular patterns" insure that Supervisory officials must have been aware of them. See Robert E. V. Lane, 630 F.Supp. 930 (N.D. Ill. 1981); Bishop v. Stoneham, 508 F.2d 1224, 1226 (2d Cir. 1974); Holland v. Connors, 491 F.2d 539 (5th Cir. 1974), at 541. Plaintiff has told officials orally filed grievance. To include RESPONSIBILITY IMPOSED BY STATUTE OR REGULATION, see Fernandez v. Chardon, 681 F.2d 42, 55 (1st Cir. 1982); Nassimari v. Lockhart, 702 F.2d 729, 732 (8th Cir. 1983); Don v. New York City Dept. of Social Services, 649 F.2d 134 (2d Cir. 1981); Downs v. Department of Public Welfare, 368 F.Supp. 454 (E.D. Pa. 1973); Williams v. Lane, 548 F.Supp. 927 (N.D. Ill. 1982).

FIRST CLAIM
(Cruel and Unusual Punishment)
8th Amendment

25. Plaintiff was denied "Twenty Seven" (27) months Credit Time Served in Official Custody which has caused "Emotional Distress" Chronic Pain Depression to which he has had to be placed on Anti Depression Medication. He was made to endure FALSE IMPRISONMENT.

26. Plaintiff was placed in a Punitive Isolation Environment without prior written notice charges against him or designating prison rule violated, without a hearing before an impartial official at which plaintiff had the right to cross-examine his accusers, and call witnesses in rebuttal, without a record of hearing, decision, reasons there for and evidence relied on and without counsel or a counsel substitute.

27. The acts of defendants and each of them subjected plaintiff to cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution, and deprived plaintiff of liberty without due process of law in violation of the Fourteenth Amendment to the United States Constitution.

28. The acts, conduct, and behavior of defendants and each of them were performed knowingly, intentionally, and maliciously, by reason of which plaintiff is also entitled to an award of punitive damages in the sum \$ 2,025,000.00 pursuant to UTAH Code Ann. § 78-18-1 (1990).

29. The conduct of defendants has subjected plaintiff to cruel and unusual punishment in violation to the Eighth Amendment to the United States Constitution, and has denied him due process of law in violation to the Fourteenth Amendment to the United States Constitution.

30. Defendants acts alleged herein have caused plaintiff to sustain damages in an amount to be determined at trial, believed to exceed \$ 200,000.00.

31. Plaintiff therefore, is entitled to recover such damages from defendants pursuant to 42 U.S.C. § 1983.

SECOND CLAIM (Conspiracy)

32. Defendants conspired together for the purpose of depriving plaintiff of his rights of equal protection of the laws and his right to equal privileges and immunities under the laws.

33. As a result of such conspiracy, plaintiff was damaged in an amount to be determined at trial.

34. Pursuant to 42 U.S.C. § 1985, plaintiff is entitled to recover such damages from defendants.

THIRD CLAIM (Racial Discrimination)

35. Defendants knowingly and intentionally which provides that all persons must have the same rights "to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens"

36. Pursuant to 42 U.S.C. § 1981, plaintiff is entitled to recover such damages from defendants.

FOURTH CLAIM (Administrative Procedure Act)

37. Defendants, violated the statute of administrative agencies federal, which statute defines the jurisdiction of the agency, what its powers are, and what it is supposed to do with those powers, State agencies are taken to state courts.

38. Defendants conduct as alleged herein was willful and malicious and manifests a knowing and reckless indifference toward and disregard of the rights of others.

39. Pursuant to APA at 5 U.S.C. § 551 et seq.

40. Which is a denial of due process.

41. Pursuant to Utah Code Ann. § 78-18-1(1)(a) plaintiff is therefore entitled to an award of punitive damages in an amount to be determined at trial.

FIFTH CLAIM (Personal Involvement)

42. The defendants failed, ignored, responsibility imposed by Policy, State, regulation custom statute to perform. It may make the defendants LIABLE, even if defendants did not know about the resulting Constitutional Violation.

- A. Double Jeopardy
- B. Due Process
- C. Credit Time Served

43. Pursuant to 42. U.S.C. § 1983 plaintiff is to recover such damages from Defendants.

SIXTH CLAIM (Punitive Damages)

44. Defendants conduct as alleged herein was willful, and malicious and manifests a knowing and reckless indifference toward, and disregard of the rights of others.

45. Pursuant to 42 U.S.C. § 1986, which provides for damage liability for anyone who having knowledge that [a 1985 conspiracy is] about to be committed, and having the power to prevent or aid in preventing the commission of the same, neglects or refuses to do so.

SEVENTH CLAIM (Attorney's Fees)

46. Because this action is a proceeding to enforce the provisions of 42 U.S.C. § 1981, 1983, 1985, 1986, Injunctive Relief, Administrative Procedure Act, Personal Involvement, plaintiff is entitled to an award of his reasonable attorneys fees.

PRAYER

WHEREFORE, plaintiff respectfully demands judgment in his favor against the defendants as follows:

1. For an order for injunctive or declaratory relief declaring Judge James S. Savaya, defendant violated 42 U.S.C. 1981, 1983, 1985, 1986, and Personal Involvement Administrative Procedure Act.
2. For an order declaring ALL other defendants violated all of the above in unison with defendant, James S. Savaya.
3. For an Award of Compensatory damages of \$2,500 per day.

of what Plaintiff would have made as a Marketing Salesman.

4. for an award of costs and attorneys fees incurred by plaintiff in connection with this matter;

5. for such other relief further that the court deems just and appropriate under the circumstances.

DATED this 22nd day of 1992.

Richard Lee Thomas
RICHARD LEE THOMAS
Attorney Pro Se

PREVIOUS LAWSUITS AND ADMINISTRATIVE RELIEF.

47. Plaintiff has filed Lawsuit in Federal Court which is being Appealed, dealing with the same facts with the Exception, that he has Exhausted all of the procedures, required per Administrative Remedy.

48. To include, this is a "TORT ACT" in State Court, which enables plaintiff to request more damage money than Federal Court.

49. Defendant, Dean Sheffield of Judicial Conduct Commission, is not included in this action, because plaintiff has not, exhausted all, Administrative Procedure yet.

50. This defendant will be added with, an Amended Complaint.

51. Plaintiff has previously sought informal or formal relief from the appropriate administrative officials regarding the acts complained of in Civil-Suit, to no avail.

DECLARATION UNDER PENALTY OF PERJURY

The undersigned declares under penalty that he is the plaintiff in the above action, that he has read the above complaint and that the information contained therein is true and correct. 28 U.S.C. 1916 18 U.S.C. Sec. 1621.

Executed at Utah State Prison on 22nd July, 1992.

Richard J. Thomas
Attorney at Law

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing Complaint was mailed this ____ day of ____ to the THIRD DISTRICT COURT OF UTAH, CLERK 240 East 400 South, SALT LAKE CITY, UTAH 84111, Pursuant to UTAH RULES OF CIVIL PROCEDURE, Revised 1991. To include SERVICE ON UTAH ATTORNEY GENERAL, Counsel for Defendants, at Attorney General's Office Department of Corrections, 6100 South 300 East, Suite 204, SALT LAKE CITY, UTAH 84107.

DATED this ____ day of ____

RICHARD DEE THOMAS
ATTORNEY PRO SE



Members
 PAUL W. BOYDEN
 VICTORIA J. PALACIOS
 GARY L. WEBSTER

THE STATE OF UTAH
 BOARD OF PARDONS
 6065 South 300 East
 Salt Lake City, Utah 84107

PAUL W. SHEFFIELD,
 Administrator

BEFORE THE BOARD OF PARDONS OF THE STATE OF UTAH

Consideration of the Status of RICHARD DEE THOMAS, Utah State Prison No. 13260 OBSOS No. 99913260

The above-entitled matter came on for a hearing before the Utah State Board of Pardons on the 19TH day of DECEMBER 1988 for consideration as:

1. ☐ ORIGINAL HEARING
2. ☐ REHEARING
3. ☐ REDETERMINATION
4. ☐ TERMINATION OF SENTENCE AND PAROLE

5. ☐ SPECIAL ATTENTION OF THE BOARD
6. ☒ RESCISSION
7. ☐

After the statement of _____ and the following witness(es)
 1) _____ 2) _____
 and good cause appearing, the Board made the following decision: _____

☒ Rescind MAY 23, 1989, 19____ parole date, CONTINUE PENDING RECEIPT OF ADDITIONAL INFORMATION

☐ Parole to become effective _____, 19____, with the following special conditions:

☐ Amend parole agreement to add the following special conditions:

1. _____
2. _____
3. _____
4. _____

☐ Rehearing for _____, 19____, for the following reasons: _____

☐ Termination of sentence and parole to become effective _____, 19____.

☐ Expiration of sentence _____, 19____.

REMARKS: _____

	Crime	Sentence	Case No.	Judge	Expir. Date
1.	AGGRAVATED ROBBERY	5-LIFE	2-3340	PALMER	LIFE
2.	AGGRAVATED KIDNAPPING	5-LIFE	2-3340	PALMER	LIFE
3.	ATTEMPTED ESCAPE	0-5 CS	CR80-682	LEARY	LIFE
4.					
5.					
6.					
7.					

It is further ordered that in the event the above named shall be found guilty of any infraction of rules and regulations of the Utah State Prison, any community corrections center or other residential facility, or shall fail or refuse to perform duties as assigned or is found in violation of any other law of the State of Utah prior to the effective date of this decision, the order may be made null and void.

By order of the Board of Pardons of the State of Utah, I have this date DECEMBER 19, 1988 affixed my signature as Administrator for and on behalf of the State of Utah, Board of Pardons.

Paul W. Sheffield

Paul W. Sheffield, Administrator

0021

MEMBERS
DENNIS M. FUCHS
VICTORIA J. PALACIOS
GARY L. WEBSTER



PAUL W. SHEFFIELD
Administrator

BEFORE THE BOARD OF PARDONS OF THE STATE OF UTAH

ORDER OF PAROLE

IN THE MATTER OF THE APPLICATION OF RICHARD DEE THOMAS
UTAH STATE PRISON NO. 13260

This matter of application for parole, termination of sentence, or expiration of sentence having come before the Utah State Board of Pardons in a regularly scheduled hearing on the 9th day of September, 1987, and the applicant appearing in person or having waived in writing the right to appearance and the Board having heard the case, issues the following order:

It is hereby ordered that Richard Dee Thomas be paroled from the punishment and sentence heretofore imposed upon him/her by a judge of the Second and Third Judicial District Court in and for the County of Davis and Salt Lake for the crime(s) of Aggravated Robbery, 1st degree, Expiration Life tops; Aggravated Kidnapping, 1st degree Consecutive, Expiration Life tops; Attempted Escape, 3rd degree Consecutive, Expiration Life tops.

The parole shall not become effective until the 12th day of July, 1988. The applicant agrees to the conditions of parole and evidences his agreement by signing the parole agreement. The parole agreement or contract shall be administered by duly authorized agents of the Utah State Department of Corrections for the Utah State Board of Pardons.

It is further ordered that if and in the event the above named applicant shall be guilty of any infractions of the rules and regulations of the Utah State Prison or shall fail or refuse to perform duties as assigned by the Utah State Prison or is found to be in violation of any other law of the State of Utah prior to the effective date of said parole, then this Order of Parole is revoked and becomes null and void.

Dated this 9th day of September, 1987.

By Order of the Board of Pardons of the State of Utah, I have this 15th day of September, 1987, reduced its decision in this matter to writing and hereby affix my signature as Administrator for and on behalf of the State of Utah, Board of Pardons.


PAUL W. SHEFFIELD Administrator

IN THE THIRD JUDICIAL DISTRICT COURT
N AND FOR SALT LAKE COUNTY, STATE OF UTAH

THE STATE OF UTAH,

Plaintiff,

vs.

Richard Dee Thomas
(HSP)

Defendant.

JUDGMENT, SENTENCE
(COMMITMENT)

Case No. 88 1910631
Count No. 1
Honorable Richard H. Moffat
Clerk Kathleen Gusterson
Reporter Jal Walton
Bailiff De Deannan
Date November 18, 1988

☐ The motion of _____ to enter a judgment of conviction for the next lower category of offense and impose sentence accordingly is ☐ granted ☐ denied. There being no legal or other reason why sentence should not be imposed, and defendant having been convicted by ☐ a jury; ☐ the court; ☒ plea of guilty; ☐ plea of no contest; of the offense of Attempted Distribution, a felony of the 3rd degree, ☐ a class _____ misdemeanor, being now present in court and ready for sentence and represented by D. Soy, and the State being represented by G. Skovdas is now adjudged guilty of the above offense, is now sentenced to a term in the Utah State Prison:

- ☒ to a maximum mandatory term of _____ years and which may be for life;
☒ not to exceed five years;
☐ of not less than one year nor more than fifteen years;
☐ of not less than five years and which may be for life;
☐ not to exceed _____ years;
☐ and ordered to pay a fine in the amount of \$ _____
☐ and ordered to pay restitution in the amount of \$ _____ to _____

- ☒ such sentence is to run concurrently with any sentence being served
☐ such sentence is to run consecutively with _____
☐ upon motion of ☐ State, ☐ Defense, ☐ Court, Count(s) _____ are hereby dismissed.
☒ Defendant is to receive credit for time served since returned
☐ Defendant is granted a stay of the above (☐ prison) sentence and placed on probation in the custody of this Court and under the supervision of the Chief Agent, Utah State Department of Adult Parole for the period of _____, pursuant to the attached conditions of probation.
☒ Defendant is remanded into the custody of the Sheriff of Salt Lake County ☐ for delivery to the Utah State Prison, Draper, Utah, or ☐ for delivery to the Salt Lake County Jail, where defendant shall be confined and imprisoned in accordance with this Judgment and Commitment.
☒ Commitment shall issue forthwith

DATED this 18th day of November 19 1988

APPROVED AS TO FORM:

DISTRICT COURT JUDGE

Defense Counsel

Deputy County Attorney

SALT LAKE LEGAL DEFENDER ASSOCIATION

**424 EAST FIFTH SOUTH, SUITE 300
SALT LAKE CITY, UTAH 84111
532-5444**

Felony — Misdemeanor Divisions

F. JOHN HILL
Director

BOARD OF TRUSTEES

ROBERT VAN SCIVER
Chairman

D. GILBERT ATHAY
Ex-Officio

**LIONEL FRANKEL
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IRENE NIELSEN
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STEWART HANSON, Jr.
LON HINDE
JOHN O'CONNELL
JOSEPH A. GETER
JOSEPH G. CHENEY, Jr.**

March 8, 1989

**Board of Pardons
6100 South 300 East
2nd Floor
Murray, Utah 84107**

**Re: State v. Richard D. Thomas
Case No. CR88-1063**

Dear Board Members:

I represented Richard D. Thomas on the conviction for attempted distribution of a controlled substance on November 18, 1989. I believe it is important for the Board to realize that Mr. Thomas was instrumental in the government's ability to obtain convictions on a matter in federal court where pleas were entered as a result of Mr. Thomas's availability and willingness to testify as a prosecution witness. As a result of that willingness Mr. Thomas's present incarceration is no doubt more difficult.

In addition, this charge was filed six months after it occurred and Mr. Thomas was not arraigned in Circuit Court to begin the prosecution until fourteen months after the crime occurred. Therefore, he served time in prison for a parole violation for the same behavior (ie his reinvolvement with drugs.) For all of these reasons Mr. Verhoef in the County Attorney's office agreed to recommend that Mr. Thomas's sentence here run concurrent with his prior case, and that he still be released to a halfway house in May of 1989 as was planned before this conviction. The court in agreement with this, sentenced Mr. Thomas concurrently and

0024

page two
letter to the Board of Pardons
Re: Richard D. Thomas
March 8, 1989

recommended he receive credit for time served since he returned to prison for a parole violation, to hopefully allow him to keep his release date and attempt to make amends for the delay in prosecuting Mr. Thomas.

I hope you will consider these matters in determining an equitable release date.

Sincerely,

A handwritten signature in cursive script, appearing to read "Debra K. Loy".

DEBRA K. LOY
Attorney at Law

DKL/js

0025



State of Utah

BOARD OF PARDONS

Norman H. Bangerter
Governor
H. L. (Pete) Haun
Chairman
Donald E. Blanchard
Michael R. Sibbett
William L. Peters
Members

448 East 6400 South, Suite 300
Murray, Utah 84107
(801) 261-6464

October 10, 1990

Richard Thomas, USP# 13260
P.O. Box 250
Draper, Utah 84020

Dear Mr. Thomas:

This is to notify you that you are scheduled for a Rescission Hearing before the Utah State Board of Pardons on October 18, 1990, at 11:00 a.m. at the Utah State Prison. Our records note new conviction. That subject will be the topic of your hearing.

Sincerely,

H.L. HAUN, CHAIRMAN/ADMINISTRATOR
UTAH STATE BOARD OF PARDONS

Enid O. Pino
Hearing Officer

cc: Utah State Prison
File

4136c

0026



BEFORE THE BOARD OF PARDONS OF THE STATE OF UTAH

INTERNAL DECISION

Consideration of the Status of THOMAS, RICHARD USP No.13260

The above-entitled matter came before the Board of Pardons on the 18th day of October, 1990 for consideration as:

1. SPECIAL CONDITIONS
2. CLASS A
3. ~~XXX~~ RESCISSION
4. OTHER

After hearing the statement of Richard Thomas and the following witness(es) 1) _____ 2) _____, the following decision was rendered:

Revoke _____ parole date, _____

✓ Rescind 5/26/92 parole date, _____

✓ Parole to become effective Sept 22, 1992, with the following special conditions:

Amend parole agreement to add/delete the following special conditions:

- A. ISP
B. F/M if over 61.
C. Randon Drug test
D. Substance Abuse therapy
E. _____
F. _____

Rehearing for

Termination of Sentence to become effective

Expiration of Sentence

Other _____

NOTE: This Interim Decision is binding and in full force and effect until reviewed by the Board of Pardons members, who will make the final determination in this matter. In the event the above named shall be found guilty of any infraction of the Rules and Regulations of the Utah State Prison, of any Community Correction Center or of any residential facility or is found in violation of any law of the State of Utah or other good cause, this order may be made null and void.

October 18, 1990
Date

Paul L. Naun
H.L. NAUN, Chairman

0027



BEFORE THE BOARD OF PARDONS OF THE STATE OF UTAH

UTAH STATE CRISIS NO. 29013250

Consideration of the Status of THOMAS, RICHARD DEE PRISON NO. 13260

The above-entitled matter came on for a hearing before the Utah State Board of Pardons on the 30th day of October, 1990, for consideration as:

RESCISSON HEARING

After the statement of _____ and the following witnesses:

1) _____ 2) _____
and good cause appearing, the Board made the following decision and order:

ORDER

XXX Rescind 05/23/1992 parole date, _____

XXX Parole to become effective 09/22/1992 with following special conditions:

_____ Agree to all the following special conditions:

1. COMPLETE ISP PROGRAM.
2. ETC. IF AVAILABLE WHILE RESIDING.
3. ETC. IF AVAILABLE WHILE RESIDING.
4. SUBSTANCE ABUSE THERAPY.
5. _____
6. _____

_____ Researing for _____

_____ Termination of sentence and parole to become effective _____

_____ Expiration of sentence effective _____

_____ Other _____

#	CRIME	SENT	CASE#	JUDGE	EXPIRATION
1	AGGRAVATED ROBBERY	5	2-3340	PALMER**LIFE	
2	AGGRAVATED KIDNAPPING	5	2-3340	PALMER**LIFE	
3	ESCAPE FROM CUSTODY	5	02-80-582	LEARY	
4	DISTRIBUTING DRUGS FOR VALUE	5	881910631	HOFFAT	11/21/1993

This decision is subject to review and modification by the Board of Pardons at any time until actual release from custody.

By order of the Board of Pardons of the State of Utah, I have this date 30th day of October, 1990, affixed my signature as Chairman for and on behalf of the State of Utah, Board of Pardons.


H. L. HAWN, Chairman

0028



State of Utah

BOARD OF PARDONS

Norman H. Bangerter
Governor
H.L. (Pete) Haun
Chairman
Donald E. Blanchard
Michael R. Sibbett
William L. Peters
Heather N. Cooke
Members

448 East 6400 South - Suite 300
Murray, Utah 84107
(801) 261-6464

February 7, 1991

Richard Thomas USP#13260
P.O. Box 250
Draper, UT 84020

Dear Mr. Thomas:

This letter is in response to a letter received by the Board of Pardons on February 1, 1991. This letter was addressed to Heather Cook, a Board member. Part of my job as a Hearing Officer is to respond to this correspondence.

Your first concern is the fact that you are housed in maximum security on a safety override. This is basically protection. You asked the Board to do something about your status at the prison. There is nothing that can be done by the Board of Pardons. We do not have jurisdiction over the operation of the Utah State Prison or any of its custody decisions. They have a classification system which, as I understand it, has administrative overrides. Apparently because of your informant activities in the past, you have been deemed as needing protection. In any case those questions relative to your classification will need to be addressed to the Department of Corrections.

The second question, if I read your letter correctly, is that you would like to appear in front of the Board of Pardons to evaluate why you cannot return to the community as prescribed. The Board of Pardons had a Rescission hearing in October of 1990. They made the decision to rescind your May 26, 1992 parole date and grant you a new parole date of September 22, 1992. That's after an additional four months. The Board has dealt with your case and the only mechanism available would be the re-determination process.

To be quite honest with you, Mr. Thomas, given the fact that you are currently under the jurisdiction of the Board of Pardons for Aggravated Robbery, First Degree Aggravated Kidnapping, a First Degree Escape from Custody, and Third Degree in distributing drugs for value, it is felt that you probably do not deserve any special consideration at this point in time.

Sincerely,

Paul Larsen

PAUL LARSEN
Senior Hearing Officer

Defendant

Citation:

SLP Case: 901001432 FS

THOMAS, RICHARD DEE

State Felony
Judge: Philip K. PalmerNO CDR # FOR THIS CASEChargesBail

Violation Date: 07/16/88

1. THEFT BY DECEPTION

76-6-405.3

2000.00

Plea:

Finding/Judgment: Amended

2. THEFT BY DECEPTION

76-6-405.A

1000.00

Plea: Guilty

Finding/Judgment: Guilty Plea

Proceedings

01/31/90 Case filed on 01/31/90.

02/01/90 ARR scheduled for 2/ 2/90 at 2:00 P in room 1 with RWR

02/02/90 Fel Arr Judge Robin W. Reese

TAPE: 248 COUNT: 469

Deft present w/o counsel

ATD None Present

ATP BUD ELLETT

PRE DSP scheduled for 02/08/90 at 0200 P in room ? with PKP

LDA Appointed

02/05/90 FILED APPEARANCE OF COUNSEL LDA: FRANCES M PALACIOS

FILED FORMAL REQUEST FOR DISCOVERY

02/08/90 PALMER/PB T 270

DEFT PRESENT W/COUNSEL FRANCES PALACIOS

MARTY VERHOEF PRESENT ON BEHALF OF THE STATE

ON MOTION OF THE STATE

C/O CHARGE AMENDED TO CLASS A THEFT BY DECEPTION

DEFT ADVISED AND WAIVED RIGHTS TO A TRIAL

DEFT PLEAD GUILTY TO AMENDED CHARGE

DEFT WAIVED TIME FOR SENT

SENT: 1 YR JAIL AT UTAH STATE PRISON CONCURRENT

COMMITMENT SENT TO JAIL

Entered case disposition of: CLOSED

Accounting Summary

Citation Amount: 3000.00

Additional Case DataSentence Summary

1. 76-6-405.3

Fine amount: .00

Jail:

Community Service:

Plea:

Find: Amended

Suspended: .00

Suspended:

2. 76-6-405.A

Fine amount: .00

Jail: 365 DA

Community Service:

Plea: Guilty

Find: Guilty Plea

Suspended: .00

Suspended: 365 DA

THIRD CIRCUIT COURT - SLC

D O C K E T

Page 2
MONDAY APRIL 22, 1991
10:16 AM

Defendant Citation:
THOMAS, RICHARD DEE

SLP Case: 901001432 FS
State Felony

Case Disposition

Disposition.....: CLOSED

DATE: 02/08/90

Personal Description

Sex: M DOB: 03/09/54

Dr. Lic. No.:

State: UT Expires:

Scheduled Hearing Summary

ARRAIGNMENT

on 02/02/90

0200 P in room 1 with RWR

PRELIM CALENDAR CALL

on 02/08/90

0200 P in room ? with PKP

End of the docket report for this case.

0031

SEP 20 1991

INMATE GRIEVANCE FORM

GF-1
910-09-0844

THIS FORM REQUIRES THAT BOTH INMATES AND DESIGNATED STAFF (ASSIGNED) SOCIAL SERVICES WORKERS / CASE WORKERS, ETHNIC MINORITY RESOURCE SPECIALISTS (EMRS), CAPTAINS OR LIEUTENANTS) THOROUGHLY COMPLETE THE FOLLOWING:

INMATES NAME Richard Lee Thomas USP# 13210 HOUSING AREA 4-23
812
116160

SECTION 1 - INFORMAL ACTION To be completed by Inmate:

Specific nature of grievance (Who, What, When, Where and How?): MP Vicki Bridwell, EMRS, Not seeing
this inmate since March 1991, Unit #2.
I have been putting in request to see staff slips
and a week ago she was seeing inmate. But
I asked her if she had been getting my slips
she said "yes", I said well when are you going
to see me, she replied tomorrow, I'm busy
doing my work. "Nay Cam" at all.
I'm trying to see her to collect some time
served from board of orders, I need her
help since March 1991

Identify those contacted regarding your grievance and state what YOU HAVE DONE to resolve the issue.

MP Vicki Bridwell, EMRS
Wrote Deputy Warden, Letter about this

What is the specific remedy you seek?

That she be made to see inmate
that's put's in slip, that is procedure, and
write on it, when she sees inmate, and give
it to Lt. or Capt., she hasn't done her job, I'm
a minority.

Richard Lee Thomas 9-16-91

INMATE'S SIGNATURE / DATE

0032

OCT 02 1991

INMATE GRIEVANCE FORM

GF-1
910.10-6604
DUE
10-12-9

THIS FORM REQUIRES THAT BOTH INMATES AND DESIGNATED STAFF (ASSIGNED) SOCIAL SERVICES WORKERS / CASE WORKERS, ETHNIC MINORITY RESOURCE SPECIALISTS (EMRS), CAPTAINS OR LIEUTENANTS) THOROUGHLY COMPLETE THE FOLLOWING:

INMATES NAME Richard Lee Thomas USP# 13260 HOUSING AREA 4-2B
812
Talbot

SECTION 1 - INFORMAL ACTION To be completed by Inmate:

Specific nature of grievance (Who, What, When, Where and How?): Pete Hawn, Paul Larsen, Policy of Board of Pardons, September 16th 1991, from Unit #2 Section 8, 812

By not responding with a Reply about Letter to Paul Larsen - Senior Hearing Officer, in his 694 for Pete Hawn - Chairman, about receiving Credit for time served, 14 Months, and Re-termination papers.

1. I received a letter from Paul Larsen - Senior Hearing Officer Feb. 1, 1991, stating, that when inmate his/her write to a Board of Pardons Member, as per Verbatim ("part of my job as a hearing officer is to respond to correspondence") to which he has not.

2. According to Rule #3.11 inmate may submit request and Re-termination, without Case Worker, it is my right according to, Board of Pardons - Handbook. Furthermore Pete Hawn, has not answered, either so I must grievance cont.

Identify those contacted regarding your grievance and state what YOU HAVE DONE to resolve the issue.

Contacted EMRS, Vickie Bridwell.
typed to S.S.W. Andrew Hunt, never got back to me.

What is the specific remedy you seek?

That, Paul Larsen, or Pete Hawn, answer in writing, about "all" mentioned above

Richard Lee Thomas 9-30-91
INMATE'S SIGNATURE / DATE
0033

LEVEL 1 GRIEVANCE
STAFF RESPONSE
UTAH STATE PRISON

GRIEVANCE NUMBER: 91D.10.0664

INMATE NAME: RICHARD THOMAS

INMATE NUMBER: USP 13260

I spoke to Mr Paul Larsen today. He states that the Board of Pardons was in the process of preparing information for a request of discovery requested by your attorney, David Angerhofer, made by a letter from him sent in August. While in that process they received your letter that you aledge has not been responded to. Mr Larsen said they had to complete the process of completing the request for discovery before they could begin to process your request.

Never the less, Mr. Larsen did address two issues brought up in your letter.

1. He will forward your request for redetermination to the board. You will have your answer as to whether the board will honor your request within two weeks from the date of this writing.

2. If you wish to have credit for time served from Judge Moffatt's court you or your attorney must provide proof of time served to the board.

If there are any more issues in your letter Mr. Larsen will address them as soon as his time permits.

E.R. Talbot

LIEUTENANT E.R.TALBOT/ October 30, 1991



Geoffrey J. Butler
Clerk

Supreme Court State of Utah

332 State Capitol

Salt Lake City, Utah 84114

Gordon R. Hall
Chief Justice
Richard C. Hofue
Associate Chief Justice
J. Daniel Stewart
Justice
Christine M. Burham
Justice
Michael B. Zimmerman
Justice

October 31, 1991

Mr. Richard Dee Thomas
P.O. Box 250
Draper, Utah 84020

Dear Mr. Thomas:

Please find enclosed a copy of the Foote v. Board of Pardons opinion of the Utah Supreme Court. The official citation to this case is 808 PACIFIC 2nd 734. It is a valid Utah Supreme Court opinion.

The Executive Director of the Judicial Conduct Commission for the state of Utah is Dean W. Sheffield. His office address is 180 South 300 West, Suite 224, Salt Lake City, Utah 84101.

I disagree with your conclusion that the Chief Justice of the Utah Supreme Court is ".....in charge of the proceedings.....of the Judicial Conduct Commission." Nothing could be further from the truth. The Judicial Conduct Commission is appointed pursuant to statute (passed by the legislature) and the Supreme Court shall review the commission's proceedings. (See photo copy of the latter half of Article VIII Section 13 of the Utah State Constitution)

You requested a response to your filings with the Judicial Conduct Commission. I regret to say I have control over the office of the clerk of the Supreme Court only. I can't tell the Judicial Conduct Commission how to run its office.

The Utah Supreme Court may review the results of the Judicial Conduct Commission, but the clerk of the Supreme Court cannot tell the commission how to do its business.

Very truly yours,

Geoffrey J. Butler
Geoffrey J. Butler
Clerk

Enc:

LEVEL II RESPONSE

Reference No: 91D-10-0664
Subject Code: 02
Location Code: 03
Month, Day, Year: 11-22-91

Mr. Richard Dee Thomas:

I have reviewed your grievance. You allege that Pete Haun and Paul Larsen of the Board of Pardons are not responding to your legitimate questions regarding your term of incarceration. You request that Paul Larsen or Pete Haun respond in writing to your questions.

The Department of Corrections has no authority over the Board of Pardons or its employees. I cannot order either Mr. Larsen or Mr. Haun to respond to your questions. Lt. Talbot has, in good faith, contacted Mr. Larsen regarding your situation, and his Level I response is self-explanatory.


Your grievance is denied.

I suggest that if you wish to appeal my disposition you may do so by following appropriate policy and procedure FDr. 02/03.02 Appeals Process.



Billie Casper
Grievance Coordinator

C. KIM THOMPSON, DIRECTOR
INSTITUTIONAL OPERATIONS


C. Kim Thompson

BC/cj
0745/96



State of Utah

BOARD OF PARDONS

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Governor
H.L. (Pete) Haun
Chairman
Donald E. Blanchard
Michael R. Sibbett
William L. Peters
Heather N. Cooke
Members

448 East 6400 South - Suite 300
Murray, Utah 84107
(801) 261-6464

December 4, 1991

Mr. Richard Thomas, USP# 13260
P.O. Box 250
Draper, UT 84020

Dear Mr. Thomas:

This letter is in response to your letter received in November, 1991. The Board of Pardons reviewed your letter and made a decision of no change. Specifically, the Board asked me to relate to you that you were given consideration by the Board of Pardons for your activities described by your attorney, Debra Loy.

Sincerely,

PAUL LARSEN
SENIOR HEARING OFFICER

ja

0037



State of Utah

Judicial Conduct Commission
Westgate Business Center, Suite 224
180 South 300 West
Salt Lake City, Utah 84101
Phone (801) 521-3911

December 6, 1991

Mr. Richard D. Thomas
Utah State Prison
P.O. Box 250
Draper, Utah 84020

Dear Mr. Thomas:

The Judicial Conduct Commission has dismissed your complaint against Judge James Sawaya.

Your remedy is appellate, and hence not within the jurisdiction of the Commission.

Very truly yours,

Dean W. Sheffield, CAE
Executive Director

I

0038

ADDENDUM C

FILED DISTRICT COURT
Third Judicial District

OCT 28 1992

By C. Beverley
SALT LAKE COUNTY
Deputy Clerk

PAUL VAN DAM (3312)
Attorney General
KIRK M. TORGENSEN (4927)
Assistant Attorney General
Attorney for Respondents
6100 South 300 East, Suite 204
Salt Lake City, Utah 84107
Telephone: (801)-265-5638

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR
SALT LAKE COUNTY, STATE OF UTAH

RICHARD DEE THOMAS,
Plaintiff,

vs.

PETE HAUN, et al.,
Defendants.

:
:
:
:
:
:
:
:
:
:
:

Case No. 920904193

ORDER OF DISMISSAL

Judge Dennis J. Frederick

This matter having come before the court on Defendants' Motion to Dismiss, and the court having reviewed the pleadings;

IT IS ORDERED, that Plaintiff's Civil Rights Complaint is dismissed with prejudice for failure to state a claim for which relief can be granted and the other reasons set forth in Defendants' Memorandum in Support of their Motion to Dismiss.

Dated this 28th day of October, 1992.

Dennis J. Frederick
HONORABLE J. DENNIS FREDERICK
District Court Judge

0063

CERTIFICATE OF MAILING

I hereby certify that a true and accurate copy of the foregoing Order of Dismissal was mailed, postage prepaid, to:

Richard Dee Thomas
P.O. Box 250
Draper, Utah 84020

Dated this 19th day of October, 1992.

L. Dean Saunders

ADDENDUM D

MAR - 9 1992

MARKUS B. ZIMMER, CLERK

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

RICHARD DEE THOMAS,

Plaintiff,

vs.

DAVID J. ANGERHOFER, et. al.,

Defendants.

:
:
:
:

Case No. 91-C-1283 S

REPORT & RECOMMENDATION

The plaintiff, Richard Dee Thomas, an inmate at the Utah State Prison, has filed suit under 42 U.S.C. § 1983 against David J. Angerhofer, Utah State Prison contract attorney. He has also named as defendants; Andrew Hunt and Vickie Bridwell, Department of Corrections Caseworkers; Paul Larsen, Enid O. Pino, Board of Pardons Hearing Officers; Peter Haun, Board of Pardons Chairman; Paul Sheffield, Board of Pardons Administrator; Michael Sibbett, Victoria Palacios, Donald Blanchard, Paul Boyden, Heather Cooke, Utah Board of Pardons; Dean Sheffield, Judicial Conduct Commission Director; Judge James Sawaya, Third Judicial District Court of Utah and R. Paul VanDam, Utah State Attorney General. The plaintiff states that he has been denied due process in violation of the Fourteenth Amendment and subjected to cruel and unusual punishment in violation of the Eighth Amendment. The plaintiff seeks \$ 3,000,000 in compensatory damages.

The case has been referred to the magistrate judge under 28

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U.S.C. § 636 (b)(1)(B). The issue is whether service of process should be allowed or the case dismissed, in whole or in part, under 28 U.S.C. § 1915(d). This report and recommendation has been submitted pursuant to the reference.

It is unclear from plaintiff's complaint if he is intending to name as defendants the State of Utah, the Board of Pardons, the Department of Corrections, the State Judicial Conduct Commission and the Utah State Attorney General, or if his intent is to name the individuals members of these entities. To the extent that plaintiff is attempting to sue the state or its entities, his suit is barred by the Eleventh Amendment to the United States Constitution. The Eleventh Amendment bars a suit by plaintiff in federal court against the State of Utah or its entities without its consent. Edelman v. Jordan, 415 U.S. 651, 663 (1974); Kennecott Copper Corp. v. State Tax Commission, 327 U.S. 573, 579 (1946). Consent to suit in federal court has not been given in this case. See Richins v. Industrial Construction, Inc., 502 F.2d 1051, 1055 (10th Cir. 1974). Furthermore, the State of Utah and its entities are not persons under 42 U.S.C. § 1983, and may not be sued under § 1983. See Will v. Michigan Dept. of State Police, 109 S.Ct. 2304, 2312 (1989). The plaintiff's complaint against the State of Utah, the Board of Pardons, the Department of Corrections and other state entities must be dismissed.

The plaintiff claims that Utah State Prison contract attorney David Angerhofer has failed to provide him with adequate

legal assistance at the state prison. Defendant Angerhofer as a contract attorney for the Utah State Prison does not act under color of state law within the meaning of 42 U.S.C. § 1983. Polk County v. Dobson, 454 U.S. 312 (1981). As to defendant David Angerhofer plaintiff's complaint should therefore be dismissed.

Plaintiff's complaint arises mainly from decisions made by the Utah State Board of Pardons. He complains of not being provided with an attorney at parole eligibility hearings. He also complains of allegedly not being given credit for time served and that the board of pardons failed to follow established rules and procedures which included failing to follow the sentencing matrix applicable to his crime. The plaintiff asserts that Department of Corrections Caseworkers Andrew Hunt and Vickie Bridwell failed to obtain on his behalf a hearing with the Board of Pardons and that this violated his civil rights. There is no constitutional right to a parole eligibility hearing. See Greenholtz v. Inmates of the Nebraska Penal and Correctional Complex, 442 U.S. 1, (1979); Dock v. Latimer, 729 F.2d 1287 (10th Cir. 1984). Such a decision is in the discretion of the Board of Pardons. The Department of Corrections and the Board of Pardons are separate entities. The Department of Corrections has no control over the Board of Pardons and cannot force them to provide plaintiff with a parole eligibility hearing. Plaintiff's complaint against Department of Corrections caseworkers should therefore be dismissed.

As to members of the Utah Board of Pardons, the Chairman and

the Director, all are absolutely immune from damage liability for actions taken in performance of their official duties regarding the granting or denying of parole.¹ Knoll v. Webster, 838 F.2d 450, 451 (10th Cir. 1988). The plaintiff's complaint against all Board of Pardon members should therefore be dismissed.

Plaintiff's complaint should also be dismissed as to Dean Sheffield, Director of the Judicial Conduct Commission. Plaintiff asserts that Mr. Sheffield failed to act on his complaint against the Justices of the Utah Supreme Court. Such a complaint is not related to plaintiff's civil rights claim as there is an insufficient nexus between the complaint and defendant Dean Sheffield. Rizzo v. Goode, 423 U.S. 362 (1976). Furthermore, the Judicial Conduct Commission does not have jurisdiction over the Utah Supreme Court and cannot order them to grant plaintiff's state habeas corpus petition. Plaintiff has no federal constitutional right to have his complaint to the Judicial Conduct Commission act on by anyone. See Linda R.S. v. Richard D. and Texas, 410 U.S. 614 (1973).

As to Third Judicial District Judge James Sawaya the plaintiff cannot maintain suit against him for damages under 42

¹ Plaintiff asserts that he is entitled under the federal constitution to be represented by an attorney at parole hearings. His assertion is incorrect. The Foote decision specifically states that any right to be represented by counsel at parole hearings and review of parole hearings by state judges comes from the Utah State Constitution and not the Federal Constitution. Foote v. Utah Board of Pardons, 808 P.2d 734 (Ut. 1991). Further, the United States Supreme Court has made it clear that there is no right to counsel at such hearings. Greenholtz v. Inmates of the Nebraska Penal and Correctional Complex, 442 U.S. 1; Baxter v. Palmigiano, 425 U.S. 308 (1976).


U.S.C. § 1983 for things done in his judicial capacity. Judge Sawaya is entitled to absolute immunity for his judicial activities. Stump v. Sparkman, 435 U.S. 349, 355-57 (1978). The judge is entitled to immunity even if he acted maliciously or in excess of his authority. Schepp v. Fremont County, Wyo., 900 F.2d 1448, 1451 (10th Cir. 1990); Myers v. Garff, 876 F.2d 79, 80 (10th Cir. 1989). The plaintiff's complaint against Judge Sawaya is improper and must be dismissed.

The plaintiff also complains that Utah Attorney General Paul VanDam has failed to respond to his letters. This claim is frivolous and does not state a cause of action under 42 U.S.C. § 1983. The plaintiff's complaint against the Utah Attorney General should be dismissed.

Because the plaintiff has not presented an arguable claim against any of the defendants his complaint should be dismissed as frivolous under 28 U.S.C. § 1915(d). Neitzke v. Williams, 490 U.S. 319 (1989). Reynoldson v. Shillinger, 907 F.2d 124 (10th Cir. 1990). IT IS SO RECOMMENDED.

Copies of the foregoing report and recommendation are being mailed to the parties. They are hereby notified of their right to file objections hereto within ten days from the receipt hereof.

DATED this 8th day of March, 1992.



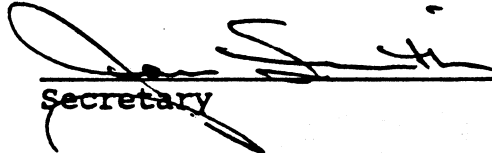
Ronald N. Boyce
United States Magistrate Judge

CERTIFICATE OF MAILING

I hereby certify that I have mailed a copy of the foregoing
Report and Recommendation to

Richard Dee Thomas
P O Box 250
Draper UT 84020

this 9th day of March, 1992.



Secretary

ADDENDUM E

FILED
UNITED STATES
DISTRICT COURT
DISTRICT OF UTAH

APR 28 12 55 PM '92

MARCUS S. ZAMER

THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

RICHARD DEE THOMAS,)	
Plaintiff,)	Case No. 91-C-1283-S
vs.)	
DAVID J. ANGERHOFER, et al.,)	O R D E R
Defendant.)	

This matter is before the Court on plaintiff Richard Dee Thomas' (1) Objection to the magistrate judge's Report and Recommendation (R&R) recommending dismissal of Mr. Thomas' complaint, and (2) Motion Requesting Reconsideration for Appointment of Counsel. Mr. Thomas has requested a hearing in connection with these motions. However, because Mr. Thomas' request does not satisfy the good cause standard set forth in D. Ut. 202(d) and the Court concludes a hearing is not necessary, Mr. Thomas' request for a hearing is denied.

The Court has reviewed Mr. Thomas' objection, the R&R and the complaint under the applicable de novo standard, 28 U.S.C. § 636(b)(1).

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Plaintiff complains that Mr. Angerhofer, the contract attorney, acted under color of state law. The magistrate judge pointed out that a contract attorney does not act under color of state law. Polk County v. Dobson, 454 U.S. 312 (1981). Plaintiff correctly asserts that when that contract attorney conspires with an official he may be considered as having acted under color of law. Tower v. Glover, 467 U.S. 914 (1984). However, in order to gain the benefit of that exception, Mr. Thomas must plead a conspiracy by alleging "specific facts showing agreement and concerted action among defendants". Durre v. Dempsey, 869 F.2d 543, 545 (10th Cir. 1989). Upon review the Court concludes that Mr. Thomas has failed to adequately plead a conspiracy and therefore, Mr. Angerhofer must be dismissed as not having acted under color of state law.

Mr. Thomas' challenges the recommendation that Judge Sawaya be dismissed. He claims that Judge Sawaya also engaged in the alleged conspiracy. The Court finds that allegation to be unsupported by the complaint and adopts the R&R as it pertains to Mr. Thomas' claim against Judge Sawaya.

Mr. Thomas contends that he enjoys a federally protected expectation of a parole eligibility hearing and right to the

assistance of counsel at that hearing, despite the case law cited by the magistrate judge in support of the opposite conclusion. R&R at 3 and 4. The Court has reviewed relevant case law and holds that the magistrate judge was correct in concluding that there is no constitutional right to a parole eligibility hearing or to the assistance of counsel at such a hearing.

Mr. Thomas objects to the R&R, alleging that the magistrate judge made assumptions concerning who Mr. Thomas was attempting to sue and in what capacity. He alleges he should have an opportunity to amend and thereby clarify his complaint. The Court has reviewed the R&R in light of Mr. Thomas' concern and concludes that the magistrate judge gave plaintiff the benefit of the doubt at every turn. See, for example, R&R at 2. Therefore, the issues of defendants' ability to be sued in various capacities having been resolved, amendment of the complaint is not necessary.¹

The Court has reviewed and considered all other arguments raised by Mr. Thomas and concludes that he has not presented an arguable claim against any of the named defendants. The Court

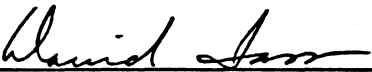
¹Plaintiff correctly points out that a party may be stripped of his official representative capacity when he violates clearly established constitutional rights of which a reasonable person would have known. Pleasant v. Lovell, 876 F.2d 787 (10th Cir. 1989). He then objects to the magistrate judge's recommendation on the basis that "the Magistrate failed to demonstrate that defendants did not violate plaintiff's constitutional rights." Mr. Thomas apparently misperceives where the burden of proof lies. It is Mr. Thomas who fails to demonstrate that defendants' alleged conduct violated his clearly established constitutional rights.

adopts the R&R and dismisses plaintiff's complaint as frivolous under 28 U.S.C. § 1915(d). The Court also affirms the magistrate judge's Order denying Mr. Thomas' request for appointment of counsel.

It is so ORDERED.

DATED this 28th day of April, 1992.

BY THE COURT:



DAVID SAM
U.S. DISTRICT JUDGE

ADDENDUM F

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

FILED
United States Court of Appeals
Tenth Circuit

DEC 08 1992

ROBERT L. HOECKER
Clerk

RICHARD DEE THOMAS,

Plaintiff-Appellant,

v.

DAVID J. ANGERHOFER; ANDREW HUNT;
VICKIE BRIDWALL; PAUL LARSEN; PETE HAUN;
MICHAEL R. SIBBETT; VICTORIA J.
PALACIOS; DONALD BLANCHARD; PAUL
BOYDEN; JAMES SEWEYE; HEATHER N. COOKE;
PAUL SHEFFIELD; ENID O. PINO; DEAN
SHEFFIELD; PAUL VAN DAM, Attorney
General,

Defendants-Appellees.

No. 92-4072
(D.C. No. 91-CV-1283)
(D. Utah)

ORDER AND JUDGMENT*

Before MOORE and TACHA, Circuit Judges, and SAFFELS,** Senior District Judge.

**Honorable Dale E. Saffels, Senior District Judge, United States District Court for the District of Kansas, sitting by designation.

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R. App. P.

* This order and judgment has no precedential value and shall not be cited, or used by any court within the Tenth Circuit, except for purposes of establishing the doctrines of the law of the case, res judicata, or collateral estoppel. 10th Cir. R. 36.3.

34(a); 10th Cir. R. 34.1.9. The case is therefore ordered submitted without oral argument.

Plaintiff, an inmate in the Utah prison system, brought this civil rights suit to redress alleged constitutional violations arising out of his efforts to obtain release on parole. He now appeals from a district court order dismissing the action as legally frivolous under 28 U.S.C. § 1915(d).

The magistrate judge and district court thoroughly analyzed the various claims asserted in the complaint, and we concur in the court's conclusion that they lack the arguable merit necessary to warrant further proceedings. See Neitzke v. Williams, 490 U.S. 319, 327 (1989); Hall v. Bellmon, 935 F.2d 1106, 1109 (10th Cir. 1991). We add the following comments only to clarify two interrelated points prompting much of the discussion in plaintiff's appellate brief.

First, plaintiff emphasizes repeatedly that the Utah Supreme Court held in Foote v. Utah Board of Pardons, 808 P.2d 734 (Utah 1991), that the state constitution, unlike its federal counterpart, grants prisoners due process rights in connection with parole proceedings. Id. at 735; cf. Dock v. Latimer, 729 F.2d 1287, 1289-92 (10th Cir.), cert. denied, 469 U.S. 885 (1984) (no due process rights enforceable in Utah parole context under federal constitutional analysis set out in Greenholtz v. Inmates of Nebraska Penal & Correctional Complex, 442 U.S. 1 (1979)); Houtz v. Deland, 718 F. Supp. 1497, 1502 (D. Utah 1989) (same result as in Dock after amendment of Utah parole provisions). Second, plaintiff asserts that the absolute immunity

rationale employed by the district court to dismiss the constitutional claims asserted against the Board of Pardons (Board) and state Judge Sawaya for failure to comply with or enforce Foot does not reach the injunctive relief sought against these defendants. See Schepp v. Fremont County, 900 F.2d 1448, 1452 (10th Cir. 1990) (following Pulliam v. Allen, 466 U.S. 522, 541-42 (1984)). Together these points comprise plaintiff's argument for reinstatement of his claims against these state defendants.

While the Foot decision recognizes some level of procedural protections in favor of the inmate seeking parole, it does not impose any limits on the unfettered discretion vested in the Board with respect to its substantive decisionmaking authority. See Northern v. Barnes, 825 P.2d 696, 698-99 (Utah Ct. App. 1992); Foot, 808 P.2d at 735. Thus, Foot notwithstanding, plaintiff has no federal constitutionally cognizable interest in the Board's determination of his parole status. See Jacobs, Visconsi & Jacobs, Co. v. City of Lawrence, 927 F.2d 1111, 1116-19 (10th Cir. 1991) (state procedural protections do not create interests implicating due process rights unless they place substantive limits on discretionary authority of decisionmaker); Campbell v. Mercer, 926 F.2d 990, 993 (10th Cir. 1991) (same); West Farms Assocs. v. State Traffic Comm'n, 951 F.2d 469, 472 (2d Cir. 1991) ("the Due Process Clause does not protect against the deprivation of state procedural rights"), cert. denied, 112 S. Ct. 1671 (1992). Plaintiff's claims based on Foot raise at most the possible violation of state law, and consequently lack the

constitutional foundation for a civil rights violation. See Oberndorf v. City & County of Denver, 900 F.2d 1434, 1442 (10th Cir.), cert. denied, 111 S. Ct. 129 (1990); cf. Brinlee v. Crisp, 608 F.2d 839, 843 (10th Cir. 1979) (state procedural errors do not present federal questions cognizable on habeas corpus), cert. denied, 444 U.S. 1047 (1980). Furthermore, these claims constitute, in essence, a challenge to the merits of the state court decision approving the procedures followed by the Board in plaintiff's case and, as such, seek a species of appellate review that is beyond the jurisdiction of the federal district court and this court. See Facio v. Jones, 929 F.2d 541, 543 (10th Cir. 1991); Van Sickle v. Holloway, 791 F.2d 1431, 1436 (10th Cir. 1986); Doe v. Pringle, 550 F.2d 596, 599 (10th Cir. 1976), cert. denied, 431 U.S. 916 (1977). Consequently, the limited scope of defendants' absolute immunity defense does not avail plaintiff, as he cannot, even with the aid of the Foote decision, assert an arguable claim necessitating invocation of the defense.

For the reasons set out above, and those expressed by the district court, the judgment of the United States District Court for the District of Utah is AFFIRMED. Pending motions are denied, and the mandate shall issue forthwith.

Entered for the Court

John P. Moore
Circuit Judge

Saffels, Senior District Judge, concurring.

I concur in the result reached by the majority based on the applicable standard of appellate review for dismissals under 28 U.S.C. § 1915(d). The Supreme Court has recently noted that a § 1915(d) dismissal is entrusted to the discretion of the court entertaining the in forma pauperis petition. See Denton v. Hernandez, ___ U.S. ___, 112 S. Ct. 1728, 1734, 118 L.Ed.2d 340 (1992). On appeal, a § 1915(d) dismissal is to be reviewed for an abuse of that discretion. Id. In Neitzke v. Williams, 490 U.S. 319 (1988), the Supreme Court espoused the standard to be applied by the district courts for § 1915(d) dismissals on the basis of legal frivolousness. I cannot join the majority in concurring with the decision below that none of appellant's claims against the 15 named defendants had sufficient legal merit to warrant further proceedings. See Olson v. Hart, 965 F.2d 940, 942 n.3, 943 (10th Cir. 1992) (allegations of complaint held sufficient to withstand dismissal under § 1915(d) as legally frivolous); Hall v. Bellmon, 935 F.2d 1106, 1109 (10th Cir. 1991) (concern that pro se litigants have notice and opportunity to avoid dismissal of legitimate claims by amending and supporting their pleadings militates against equating § 1915(d) standards with those for Rule 12(b)(6) dismissal and Rule 56 summary judgment). Nevertheless, I cannot say that the district court abused its discretion in dismissing the complaint as legally frivolous. I therefore concur in the result reached by the majority.

ADDENDUM G

FILED IN UNITED STATES DISTRICT COURT, DISTRICT OF UTAH
DEC 16 1991
BY MARK J. B. LAMMICH, CLERK
DEPUTY CLERK

Richard Dee Thomas,
Plaintiff

AFFIDAVIT OF VERIFICATION

STATE OF UTAH)
COUNTY OF SALT LAKE) SS

42 U.S.C. § 1981
 Pursuant to 42 U.S.C. § 1983
 [42 U.S.C. § 1985(3)
 42 U.S.C. § 1986

91-C-1283 S

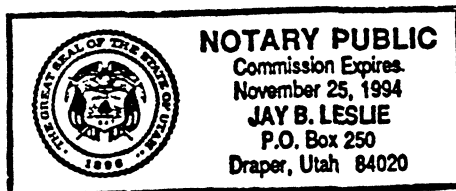
The affiant, Richard Lee Thomas swears that facts stated in Complaint-Civil Right Demand for Jury Trial, Statement of Proceedings, Statement of Facts, Pursuant to 42 U.S.C. § 1983, are true to his knowledge and that facts stated on information and belief are true to the best of his knowledge and belief. *Richard Lee Thomas*

Signed &

SWORN on: 11-22-91

Richard Lee Thomas
Richard Lee Thomas

[Signature]
NOTARY



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IN THE UNITED STATES DISTRICT COURT OF UTAH

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Ronald N. Boyce

AFFIDAVIT OF VERIFICATION.

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RICHARD DEE THOMAS
Attorney Pro Se
Utah State Prison
P.O. Box 250
Ogden, Utah 84020

IN THE UNITED STATES DISTRICT COURT OF UTAH
CENTRAL DIVISION

RICHARD DEE THOMAS
Plaintiff,
v.

CIVIL RIGHTS COMPLAINT

UTAH BOARD OF PARDONS:

UTAH JUDICIAL CONDUCT
COMMISSION:

UTAH THIRD DISTRICT
COURT:

UTAH ATTORNEY GENERAL:

UTAH DEPARTMENT OF
CORRECTIONS:

UTAH STATE PRISON
CONTRACT ATTORNEY:
Defendants

INTRODUCTION - FORWARD

INTRODUCTION-FORWARD, CONT.

By Richard Lee Thomas

This is necessary, because the circumstances that are in question need to be pointed out and described for this Honorable Court.

Being that the plaintiff is currently in Prison and is Attorney Pro Se, in very difficult situation, so this Introduction-Forward is, in accordance with "All Contained," in this Complaint. History bringing about Complaint.

All of the defendants in this complaint, are Utah State employees who have not administered their Office's as to

- Promulgation of policy.
- Absence of policy or procedures.
- Responsibility imposed by statute or regulation.
- Failure to train and supervise.

The defendants have shown all of the above by the following.

Which will show Plaintiff's reasons of presenting introduction and forward, so this Honorable Court, can better understand, the "Complaint".

"Deliberate indifference," by knowing of constitutional violations and not willing to correct them.

"Gross negligence," by allowing the violations to continue, and not adhering to United States or Utah constitutions.

"Egregious failure to act," by dismissing the plaintiff's Petition of Writ of Habeas Corpus and Postconviction Relief, when merit was substantive and proper with documents of proof.

"Reckless disregard," by not affording the plaintiff the Utah Civil Procedure Guidelines 65 B, & Revised, or Utah Board of Pardons, Policy & Procedure, Utah Attorney General, Utah Judicial Conduct Commission, Utah Department of Corrections, Utah State Prison Contract Attorney, to include, Equal Protection and Due Process violations.

INTRODUCTION - FORWARD

Plaintiff also includes reasons by Law, the "clear absence of all jurisdiction" describing how these Officials departed from, his/her judicial, local government, counties, cities, municipalities, and agencies, roles.

The Judge, Utah Board of Pardons, Utah Attorney General, Utah Department of Corrections, Utah State Prison Attorney/Contract, and Utah Judicial Conduct Commission, employees departed from their roles, by not following the - Utah Supreme Courts, opinion ruling in the, "James Carlos Foota VS. Utah Board of Pardons, members et., al. (see Foota documents).

The Utah Attorney General, is still in violation as to, Utah Constitution, Article VII Section 16. To which his job of legal advisor of state officers, and shall perform such other duties as provided by law. He is or was not acting in a legislative, judicial or prosecutorial capacity.

The plaintiff is attempting to introduce in this introduction and forward, what is being, "Alleged" in Complaint, as to, Individual and Capacity. Personal involvement, liability or on the failure to act.

- Knowledge and acquiescence.

All State Officials named in, 1983 Civil Rights Suit have knowledge of rights being violated, are in a position to correct them and have refused, and failed to do so.

To be liable, an official must know enough to be on notice of the illegal conduct.

Plaintiff has shown, knowledge and acquiescence by filing grievances, writing letters - (see attached to Complaint) and putting, All Utah State employees and defendants on Notice. To which they have ignored and refused to correct.

INTRODUCTION FORWARD

Plaintiff is establishing facts, for this Honorable Court, through, introduction forward, and proceedings.

Immunity, as to the [Eleventh Amendment] Because plaintiff is suing for damage, in his/her individual capacities.

Local governments (counties, cities, municipalities) and their agencies are not protected by the States Eleventh Amendment immunity and may be sued under 1983.

The defendants as government officials and employees including prison personnel, are entitled to (Qualified Immunity) in damage suits.

Under the doctrine of qualified immunity, officials are liable only if they knew, or should have known,

that they were violating clearly established Constitutional Rights, as plaintiff intends to prove. (see Exhibits)

Plaintiff also states, as in "Monell v. New York City Department of Social Services", local governments and agencies can be sued under 1983 for constitutional violations arising from "a policy statement, ordinance, regulation or decision adopted and promulgated by that body's officers. To include the following

- Decision or formal policy

- Custom

- Inadequate training, supervision, or procedure.

"All" of the defendants, named in the following Complaint, are responsible, liable, to include knowingly intentionally did "Conspire" with the intent to, ignore, neglect, and deny plaintiff, Twenty Three Months, Time Served, and other various violations, named in complaint.

To which has caused plaintiff to suffer from Severe Depression, to which he is being, medically treated for by medication, "Amitriptyline HCL 50mg", causing Cruel and Unusual Punishment.

RICHARD DEE THOMAS
Attorney Pro Se
Utah State Prison
P.O. Box 250
Progar, Utah 84020

IN THE UNITED STATES DISTRICT COURT OF UTAH
CENTRAL DIVISION

Richard Dee Thomas
Plaintiff

vs.
David J. Angachofsky, et al,
Defendants

STATEMENT OF PROCEEDINGS

Now comes the Plaintiff with the procedural history of the case, of the Complaint.

The Utah Board of Pardons, prior to, March of 1991, had been able to administer a prisoners, time to be spent in prison, without prisoners being able to seek any recourse of Utah Board of Pardons, decisions.

What is not the only alternative, since, Utah Supreme Courts, ruling opinion, which is to be explained.

The complaint by the Plaintiff is in, accordance to that, opinion and prior violations by the Utah Board of Pardons, Third District Court, Utah Judicial Conduct Commission, Utah Attorney General, and the Utah Department of Corrections, plus Utah State Prison Contract, Attorneys.

Plaintiff, will attempt to explain, in these proceedings, which is difficult.

From the Utah Board of Pardons the plaintiff was given more, than specified time to be served according to, Utah Board of Pardons, TIME GUIDELINE MATRIX

STATEMENT OF PROCEEDINGS

to which plaintiff was not allowed to be present, or counsel, also he was denied, numerous, Rules of Policy and Procedure, that govern Utah Board of Pardons. Plaintiff was taken back in front of, a representative of the, Utah Board of Pardons, and given, additional sentence with, notification, of evidence to be used, and not informed by a reasonable time limit, which is a Procedure & Policy of, Utah Board of Pardons.

Time lines, and Hearings were wrong according to, again, Rules Policy & Procedure of Utah Board of Pardons.

Utah Board of Pardons, then extended plaintiff's sentence being served, and made him serve the sentence twice.

Furthermore plaintiff had been given Credit Time Served, with appropriate documents included, by a Utah Judge, to which Board of Pardons, has countenanced ignored.

When the, UTAH SUPREME COURT, in fact ruled in a opinion, that inmates at the Utah State Prison, could APPEAL any and all, Utah Board of Pardons, decisions to, Utah Third District Court, by Writ of Habeas Corpus. Plaintiff was denied.

Before being denied, Plaintiff filed a complaint against, Third District Court Judge, to Utah Judicial Conduct Commission, which was been ignored, and facts gone, un-reported to, Utah Supreme Court.

Plaintiff then wrote to Utah Attorney General, of Mis-Conduct by, Utah Board of Pardons, Utah Third District Court, Utah Judicial Conduct Commission, Utah Department of Corrections, explaining of ALL the infractions being committed, denying rights rules to which he ignored. As a matter of Law the Utah State Prison employs Attorneys, for the Utah State, inmates, whose responsibility is to, advise, prepare, research, and file initial pleadings.

STATEMENT OF PROCEEDINGS

Which he has, intentionally, knowingly, refused to do and is in, direct violation of his contract.

The plaintiff in seeking Administration Relief from Utah Department of Corrections, employees by making them aware of situation, providing the necessary documents, presenting "proof" that employees did in fact, Conspire and Attempt, to provide a explanation, that has been in, fact - returned by another employee, and rules, Policy & Procedure of the, Utah Board of Pardons.

(See Statement of Facts)

Richard Lee Thomas
Richard Lee Thomas
Attorney Pro Se

STATEMENT OF PROCEEDINGS, continued

Plaintiff wishes to assert his, civil rights were in, fact violated, with "deliberate indifference" and that, Utah State Employees as in the proceedings specified in, Civil Rights Complaint (Pursuant to 42 U.S.C. § 1983).

The plaintiff includes the private conduct action under [42 U.S.C. § 1985(3)] which provides for actions against persons who "conspire... for the purpose of depriving... any person, or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws" and 42 U.S.C. § 1986, which provides for damage liability for anyone "who, having knowledge that [§ 1985 conspiracy] is about to be committed and having power to prevent or aid in preventing the commission of the same, neglects, or refuses to do so...". It is being pointed out in the Complaint, following these proceedings by the

STATEMENT OF PROCEEDINGS

Plaintiff. Furthermore 42 U.S.C. 1981, which provides that all persons must have the same rights "to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens."

The Plaintiff is Black, Afro American. who expresses to this Honorable Court that, "All" the named defendants, and those to be named have, and are still violating Plaintiff's Constitutional rights, and Utah Constitution rights, and the Exhibits provided are proof of Complaint and Statutes.

DATED this 8th day of December 1991

Richard Lee Thomas
Richard Lee Thomas

RICHARD AEE THOMAS

Attorney Pro Se
Utah State Prison
P.O. Box 250
Sny, Utah 84026

IN THE UNITED STATES DISTRICT COURT OF UTAH
CENTRAL DIVISION

Richard Aee Thomas,
Plaintiff

David J. Angachotia et al.,
Defendants,

STATEMENT OF FACTS

Plaintiff at this time will attempt to provide most of the known facts of this case.

On November of 1988 the plaintiff was sentenced Third District Court by Judge Richard Mottatt to serve a sentence of 0-5 for Attempted Distribution at the Utah State Prison, to which in the plea bargain, Attorney for Plaintiff, Mr. Darryl J. Loy, Esquire, in an agreement with Prosecuting Attorney, Marty Vachott, agreed in a letter to Utah Board of Pardons and Commitment signed by Judge, to be given credit for Time Served (14 months) to which, Utah Board of Pardons, failed, and refused to do, which is in violation of Rules 6(e) procedure, Utah Board of Pardons, in violation of Utah, and United States, rights.

Then the Board of Pardons, on October 18th 1990, added (4 months to a concurrent 1 year sentence, which had expired). The Board scheduled a hearing (Rescission) which according to Rules procedure, was wrong hearing.

At the time the Board again sentenced Travis

STATEMENT OF FACTS

which is in violation to Utah Constitution, Also violated Boards policy & procedure by not allowing counsel, or providing at least, 7 days to prepare for hearing and what evidence was to be used.

As the Utah Supreme Court has determined is violating, Due Process, Equal Protection, as in "Foot v. Board of Pardons - Opinion."

Board of Pardons has conspired against plaintiff by false information used at hearings, which Board of Pardons has failed to prove. Finding of Fact, and Conclusions of Law, of how, sentence came about and length, per Matrix guidelines. Which is also in violation of Boards rules, and the Utah Constitution.

Plaintiff then, upon the Utah Supreme Courts opinion, Foot v. Utah Board of Pardons, I notified, Utah Prison Contract Attorneys, David J. Amador, that I wanted him to prepare, Hearings for Appeal of Board of Pardons decisions.

At that time the defendant, informed me that the, Chairman, & Administrator, later have told him not to file, any Writs of Habeas Corpus, for prison inmates until the Utah Board of Pardons & Utah Attorney General, notified him. To which, defendant, placed a Memo to this effect, to all inmates. I, then filed a grievance, to which defendant had sent me, a do it yourself packet, excluding me from proper preparing, researching, and current information, concerning, Writ for Habeas Corpus and Post Conviction Relief.

Then defendant, told plaintiff, he would prepare the documents after plaintiff, provided, time served documents confirming this, defendant used improper and selective, statutes, that did not apply to Writ, he also gave wrong information when plaintiff showed defendant,

STATEMENT OF FACTS

Minute entry dismissing petition.
Also, he conspired with Utah Attorney General Board of Pardons, by asking their permission, when Supreme Court made an opinion. Defendant refused to file writ after writing (3) letters saying he would re-file if dismissed. He knew it would be dismissed because he filed under wrong Utah statute.
Plaintiff's constitutional rights of Due Process and Equal Protection, Cruel and Unusual punishment by Third District Court Judge Savaya, not affording me Utah Rules of Civil Procedure 65 B(1)(1) thru (10). Defendant also violated Utah Constitution articles. He also conspired with only Utah Attorney General's motions and ruled for State, without notifying plaintiff's "grounds" as procedure dictates.
This defendant did violate Utah Judicial's Conduct Commissions rules.
As well, the Utah Supreme Court's opinion concerning Foots v. Board of Pardons. This was ignored.
Plaintiff then contacted Utah Judicial Conduct Commission, requesting investigation. Executive Director Jean W. Shattuck failed and refused to disclose information of investigation, even to Utah Supreme Court, which is a violation of Utah Constitution.
Plaintiff also contacted Caseworker Andrew Hunt who is in violation of Utah Department of Corrections policy & procedure, by not initiating process as Utah Board of Pardons states caseworkers duties are to provide outlet to Board as to matters such as, time served. Andrew Hunt, wrote C-Note stating Board was aware of documents proving legality, he refused to pursue this issue. Also he said Board, was not giving credit time served.

STATEMENT OF FACTS

Plus he denied and refused to do his job of preparing Redetermination papers, as Board's Policy and Procedure, to which he conspired to prevent Plaintiff from Equal Protection and inflicted cruel and unusual punishment by he incarcerated just, release date.

Defendant Vicki Bridwell, refused to do her job as, EMRS as Board of Pardons and Department of Corrections Policy & Procedure, describes that she, conduct services of aiding inmates in matter of this nature. Andrew Hunt, told, Bridwell not to intervene in this matter, because Board was aware of Tim's legal situation, and nothing would be done, and Board of Pardons, hearing officer, Paul Larsen, told, Hunt the Board had been aware of this matter since (1984).

By all the information provided, that it is clear of the conspiracy, to void Plaintiff of Equal Protection, due process, and Tim's legal which has caused Plaintiff to be placed on Anti Oppressant Mediation, served, 23 months more than, Matrix time lines described, defined and which is, the Law.

3a Complaint, and Exhibits

Richard Lee Thomas
Richard Lee Thomas,
Attorney Pro Se

continued from pg. 4
Statement of Facts

As plaintiff has been stating in these facts additional information, and proof of Utah Board of Pardons violating policy & procedure as to their Time Served. (see in Policy)

On November 12th 1991, the Utah Board of Pardons held a "Special Attention Hearing" in regards to the plaintiff submitting the proper documents of proof to Board of Pardons, as the policy dictates. Board of Pardons, refuses, and denies the plaintiff the afforded rules of policy and procedure, also denying him, Equal Opportunity, and subjecting him to cruel and unusual punishment by making him serve "Twenty Three Months" more, after Judge ordered, Credit Time Served, which is also, Board's policy.

Statement from Utah Board of Pardons, "After a review of the submitted information and good cause appearing, the Board makes the following decision and order:"

Results

No change. in 09/22/92 parole date and no back termination.

This concludes, Statement of Facts.

Copy attached as Exhibit.

Richard Lee Thomas
Richard Lee Thomas
Attorney Pro Se

Dated this 8th day of December 1991

RICHARD DEE THOMAS
Pro Se Plaintiff
Utah State Prison
P.O. Box 250
Draper, Utah 84020

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

RICHARD DEE THOMAS
Plaintiff

v.

DAVID J. ANGERHOFER, individually
and in his capacity as an
Contract Attorney for the
Utah State Prison; Inmates;
ANDREW HUNT, individually
and in his capacity as an
Case Worker for the Utah
Department of Corrections;
VICKIE BRIDWELL, individually
and in her capacity as an
EMRS for Utah Department of
Corrections;
PAUL LARSEN, individually
and in his capacity as an
Senior Hearing Officer for the
Utah State Board of Pardons;
PETE HAUN, individually and
in his capacity of the
Chairman & Administrator for
Utah State Board of Pardons;
MICHAEL SIBBETT, individually
and in his capacity as an
member of Utah State Board
of Pardons;
VICTORIA PALACIOS, individually

Case No.

CIVIL RIGHTS COMPLAINT AND
DEMAND FOR JURY TRIAL

(Pursuant to 42 U.S.C. § 1981
42 U.S.C. § 1983
42 U.S.C. § 1985(3)
42 U.S.C. § 1986)

and in her capacity as a
member of Utah State Board of
Pardons;

DONALD BLANCHARD, individually
and in his capacity as a
member Utah State Board of
Pardons;

PAUL BOYDEN, individually and
in capacity as a member
Utah State Board of Pardons;

HEATHER N. COOKE, individually
and in capacity as a member
Utah State Board of Pardons;

PAUL SHEFFIELD, individually
and in capacity as the
Administrator Utah State Board
of Pardons;

DEAN W. SHEFFIELD, individually
and in capacity as Executive
Director Utah Judicial Conduct
Conduct Commission;

JAMES S. SAWAYA, individually
and in capacity as a
Utah Third District Court Judge;

R. PAUL VAN DAM, individually
and in capacity as the
Utah State Attorney General;

ENID O. PIND, individually and
in her capacity as Training
Officer Utah Board of Pardons;

JOHN DOES, individually and in
their capacity as employees of
Utah State Judicial Courts;

A. JURISDICTION

1. Richard Lee Thomas, is a citizen of Utah, who presently resides at the Utah State Prison, at Post Office Box 250 Nepes, Utah.

2. Defendant David J. Angerhofer is a citizen of Utah, and is employed as the Contract Attorney for Prison inmates, by the Utah Department of Corrections. At the time the claim(s) alleged arose, this defendant was acting under color of state law in that he is an employee of Department of Corrections. He refused to perform the duties of his contract, by failing to perform, preparing and filing of Extraordinary Writ of Habeas Corpus, and 42 U.S.C. § 1983 civil rights complaint, as his contract dictates. That he purposely used improper Statutes of Utah Law, in preparing Petition for Writ of Habeas Corpus for Post Conviction Relief. After by writing Plaintiff letters, saying he would, (see letters). Attached to complaint. To include the defendant said in a conversation to Plaintiff, he said Attorney General of and for Utah - R. Paul Van Nam, had told him not to file petitions, in the - James Carlos Foots v. Utah Board of Pardons until, APPEAL, to which he and his partner issued a Memorandum saying this. Then after controversy made, "do it yourself" which is not in their contract. Defendant is to get a law library, advisor and do research, pertinent to preparing and filing legal documents for Utah State Prison inmates. That he is in, conspiracy with, Utah Department of Corrections, and Utah Attorney General's Office and Third District Court, and Utah Board of Pardons, by using selective information given by Attorney General's Office, to prepare and file legal documents against Attorney General, or State of Utah, to which, R. Paul Van Nam defends. By acting on information given by Board of Pardons, as to not file on, Utah Supreme Court, opinion, Board told them not to, defendant, in memo said this. (see memo). By using old Utah Rules of Civil Procedure 65B, when revised one was to be used, in Third District Court. (see revised) from Attorney General.

The purpose of this lawsuit is to extend and expand the nature and extent of legal services provided by attorneys to inmates in the Utah State Prison. As the lawsuit that is pending in the United States District Court for the District of Utah, Casper et al v. Deland et al, (Case No. 90-C-842 G) challenging the adequacy of legal assistance provided to all current and future inmates in the Utah State Prison system.

3. Defendant Andrew Hunt, is a citizen of Utah, and is employed as a Case worker at the Utah State Prison. At the time the claim(s) alleged in this complaint arose, the defendant was acting under color of state law in that he is an case worker for the Utah Department of Corrections, and was responsible for providing current and true information, as to Utah Board of Pardons, as to initiating course of action to Board of Pardons, for, Credit For Time Served. In which he refused to do, which is in violation of Policy and Procedure Utah Department of Corrections. To include giving false information in this matter to, Plaintiff (See G-Note) attached. That in letter to Plaintiff, Andrew Hunt, refused to file Redetermination to Board of Pardons. (See letter). Which is untrue, because in answer to a Grievance, Mr. Paul Larsen, Senior Hearing Officer, responded that Board of Pardons, will in fact, hear redetermination (See Grievance answer).

4. Defendant Vickie Bridwell, is a citizen of Utah, and is employed as a EMRS at the Utah State Prison. At the time the claim(s) alleged in this complaint arose, the defendant was acting under color of state law in that she is an EMRS for the Utah Department of Corrections and according to, Board of Pardons Policy & Procedure, to include Department of Corrections Policy & Procedure, she is suppose to assist in gathering facts for hearing and contacting, Board of Pardons, she did not aid until Grievance was filed and after "Three Months" of writing letters concerning Board of Pardons, still failed to obtain Hearing

(See Grievance), and letter.

5. Defendant Paul Larsen is a citizen of Utah, and is employed as the Senior Hearing Officer of Board of Pardons. At the times the claims alleged in this complaint arose, this defendant was acting under color of state law in that he is the Senior Hearing Officer for Utah Board of Pardons and is responsible for making Board of Pardons, roll calls and inmate files updated with current information, and making Board aware of correspondence concerning Credit Time Saved documents which he failed to do. That he failed to notify of Rescission Hearing according to Board of Pardons Rules (See Rules) or information to be used at hearing (See Footy Board opinion). To include later he wrote to me, making a judgement that only Board of Pardons is empowered to do (See letter). That he violated Board of Pardons rules by not informing Board of New Evidence, concerning Plaintiff. Which has caused Plaintiff to be subjected to, Cruel and Unusual Punishment, by keeping incarcerated, when he would of been released. (See letters, and petition, and grievance)

6. Defendant Pete Hayn is a Citizen of Utah, and is employed as the Administrator & Chairman for the Utah State Board of Pardons. At the time the claims alleged in this complaint arose, this defendant was acting under color of state law in that he is the Chairman & Administrator for Utah Board of Pardons and is responsible for administering Justice at hearings which he failed to do by not following Utah Board of Pardons Rules, for Credit Time Saved, as defined in Policy & Procedure, to include not having lawyer at hearing, by not attending, Due Process and equal protection of the law, and subjecting to cruel and unusual punishment, by keeping Plaintiff in custody when he should be on parole, (See Footy opinion).

7. Defendant Michael Sibbet is a citizen of Utah and is employed as a member Utah Board of Pardons. At the time the claims alleged in this complaint arose, this defendant was acting under color of state law in that he is a member of Utah State Board of Pardons and is responsible for making plaintiff do time on a sentence twice, by sentencing him to four extra months on a concurrent sentence imposed by Third District Court Judge. To include that Board of Pardons did not allow counsel, (See Footnote Board of Pardons Opinion) did not notify within seven days of hearing, by not making aware of information to be used at hearing or a chance to refute it. That hearing time according to Board of Pardons, Policy & Procedure had elapsed, wrong hearing conducted. (See Rules and disposition).

8. Defendant Victoria Palacios is a citizen of Utah and is employed, or was as a member of Utah Board of Pardons. At the time the claims alleged in this complaint arose, this defendant was acting under color of state law in that she was a member of Utah Board of Pardons and was responsible for Plaintiff's not being present at hearing, where letter of commitment and Credit for Time Served, was not added to as defined in Board of Pardons, Policy & Procedure (See Procedure). By not attending Plaintiff, due process equal protection of law, subjecting to cruel and unusual punishment, by keeping incarcerated, when should be on parole. (See Footnote Opinion). Processing false documents, of hearing, that inmate was not present, again violating Policy and Procedure, of Board of Pardons of Utah State.

9. Defendant Ronald Blanchard, is a citizen of Utah and is employed as a member of Utah Board of Pardons. At the time the claims alleged in this complaint arose, this defendant was acting under color of state law in that he was and is a

member of Utah Board of Pardons and was responsible for Plaintiff not being afforded Board of Pardons Rules of Policy and Procedure. (See rules attached)

10. Defendant Paul Boyden, is a citizen of Utah and is employed, or was a member of Utah Board of Pardons. At the time the claims alleged in this complaint arose, this defendant was acting under color of state law in that he was a member of Utah Board of Pardons and was responsible for Plaintiff not receiving credit for time served, to include not affording him multiple rules of Board of Pardons, Policy and Procedure. (See Rules)

11. Defendant Heather N. Cooke is a citizen of Utah and is employed as a member of Utah Board of Pardons. At the time the claims alleged in this complaint arose, this defendant was acting under color of state law in that she is a member of Utah Board of Pardons and is responsible for Plaintiff not being given credit for time served, to include, Plaintiff wrote her explaining in details of, Board of Policy rules of Policy and Procedure being violated, to which she did not respond. (See letter)

12. Defendant Paul Sheffield is a citizen of Utah and was employed as the administrator for Utah Board of Pardons. At the time the claims alleged in this complaint arose, this defendant was acting under color of state law in that he was responsible for the gathering of "All" pertinent information to be used at Board of Pardons hearings, for and against Plaintiff. He only used or provided, selective information against Plaintiff by excluding commitment from Judge Moffitt crediting Plaintiff time served, to include he excluded letter from defense in cooperation with Prosecutor Marty Veerhoff, giving credit for (14 months - see documents). Also by, rescinding Plaintiff's, May 1989 Parole date in

December of 1988 without Plaintiff being present, as to Board of Pardons Rules-Policy and Procedure (See Policy & Procedure). To include time from December of 1988 to July 1989 that Plaintiff waited to be heard at Board of Pardons, it was not given credit for this time. Either (9 months) which is another violation of Policy & Procedure, and United States Rules, as of July 15th 1987. To include that administrator affixed his signature to documents that were not in conformity to Policy & Procedure, as to Matrix Guidelines of Board of Pardons Rules, Policy & Procedure that require this process as to Utah Law. (See Board of Pardons, App P Matrix Guidelines)

13. Defendant Dean W. Shafield is a citizen of Utah and is employed as the Executive Director for Utah Judicial Conduct Commission. At the time the claims alleged in this complaint arose, this defendant was acting under color of state law in that he is and was responsible for investigating a complaint plaintiff formally filed with defendant. He did not follow Utah Constitution Article VI Section 19. Nor did he respond to Utah Constitution Article VIII Section 12 or Article VIII Section 13. To include he has not managed this office properly and ignored plaintiff's complaint. Also he has failed to report findings of complaint to Utah Supreme Court or to Utah Supreme Court Chief Justice. Or respond to plaintiff formally in writing. (See letter from Utah Supreme Court - "Check".)

14. Defendant James S. Sawaya is a citizen of Utah and is employed as Third District Court Judge. At the time the claims alleged in this complaint arose, this defendant was acting under color of state law in that he was responsible for dismissing plaintiff's Petition for Writ of Habeas Corpus AND Post Conviction Relief, as an Appeal of Utah State Board of Pardons Rules Policy & Procedure, Matrix Guidelines (See Petition). As per a Opinion from the Utah Supreme Court, Chief Justice,

Gordon R. Hall, Richard C. Howe, Associate Chief Justice,
J. Daniel Stewart, Justice, Christine M. Durham, Justice, and
Michael D. Zimmerman, Justice's, CONCUR, ON, (See Opinion)
To which, defendant, did not allow access to court.
Named plaintiff, due process, along with Equal Protection of
Law, to include he violated Utah Rules of Civil Procedure
65B(1)(i) thru (10). That defendant violated Utah Constitution
Article I section 10, 11, & 12. To include Utah Constitution
Article VI section 19. Furthermore the defendant is in violation
of Utah Constitution, Article VIII section 13. (1)(3)(5). By not
issuing final order, or reasons for dismissal of "Petition", to
which no documents, sent to plaintiff have defendant's
signature. That he violated rules as to, communicating
improperly with only one side to a proceedings, with
Assistant Attorney General, Lorenzo K. Miller, who sent dismissal
Order, unsigned by Judge-defendant. (See Order). When
defendant never adhered to "Any" of plaintiff's motions.

15. Defendant R. Paul Van Dam is a citizen of Utah and is
employed as, Utah State Attorney General. At the time the claims
alleged in this complaint arose, this defendant was acting
under color of state law, because he is according to Utah
Constitution, Article VII Section 12, and Article VII section 16.
Is to represent Utah's interests, in which he did as has
not been done, as to advising and saying that plaintiff
rights have been violated by Utah State agencies.
Plaintiff has written to, Utah Attorney General, in detail
about violations (see letter), and he has not attempted
to correct any or all specified, to which he has denied
plaintiff life, liberty interests, by preventing plaintiff's release
from prison, because he is being imprisoned, illegally. That
he has failed his office, and Utah Supreme Court's Opinion
for Justice in all the above and thought this Complaint.

CIVIL RIGHTS COMPLAINT (Pursuant to 42 U.S.C. Section 1983)

That he conspired with Prison Contract Attorney, Board of Pardons, Third District Court after being made known of violations, That defendant did not Execute his duties of Utah Attorney General Office, to correct All being alleged.

16. Defendant, Enid O. Pino is a citizen of Utah and is employed as Utah Board of Pardons as a Hearing Officer. At the time the claims alleged in this complaint arose, this defendant was acting under color of State law, because she sent Board of Pardons, rescission hearing notice without allowing plaintiff time to procure counsel, or knowledge of what hearing was to include, so plaintiff could rebut or examine evidence to be used prior to hearing as established in, "James Camps Foots v. Utah Board of Pardons & Pat Hayn et al.". This defendant violated Board of Pardons Rules Policy and Procedure, in Rescission Hearings. (See later proceedings)

17. Defendants John Doss, 1-thru 10 are Utah citizens and are employed by the State of Utah. At the time the claims alleged in this complaint arose, this defendants were acting color of State law. That they are employees of the State of Utah and are directly responsible for wrongful actions alleged herein.

18. Jurisdiction is invoked pursuant to 28 U.S.C. Sec. 1343; 42 U.S.C. 1983.

B. NATURE OF CASE

19. Plaintiff, was denied proper Rules, of Policy & Procedure for, Hearings, Credit Time Service, Representation, Matrix Guidelines.

CIVIL RIGHTS COMPLAINT

(Pursuant to 42 U.S.C. Section 1983)

To include Plaintiff has been denied proper relief from the Utah Attorney General, Third District Court, Utah Board of Pardons members, and Utah Judicial Conduct Commission and refused proper preparation and filing to include he was subjected to improper and false information from Prison Contract Attorney, employed by Utah Department of Corrections.

20. Defendants Hunt, Bridwell, Angerhofer, all knowingly and intentionally denied plaintiff the opportunity of contacting the Board of Pardons, by not doing their jobs as specified in, Utah Department of Corrections, Policy Procedure and job description as described. To include provided false information to plaintiff concerning Board of Pardons, Hearings and all matters.

21. Defendants Larsen, Hahn, Sibbitt, Palacios, Blanchard, Boyden, Cooper, Shattuck, and Pino, Board of Pardons administrators-Chairman, and members, were and are in dereliction of their duty by failing to follow the Utah State Board of Pardons policies and procedures, hearings, time matrix, having counsel, proper documents were not used and by ignoring Utah Constitution Laws, along with United States Constitution Laws. To include defendants have not complied with Utah Supreme Court, opinion ruling, "Foot v. Board of Pardons".

22. Defendants, D. Shattuck, Savaya, Van Dam are Utah State Judicial employees who are in dereliction of their duties as administering justice, for the State of Utah, according to Utah Constitution, by denying plaintiff, Utah Civil Procedure Rule 65 B, 194 process Equal Protection, by withholding proper and important information and conspiring with Board of Pardons, and Utah Department

CIVIL RIGHTS COMPLAINT (Pursuant to 42 U.S.C. Section 1983)

of Corrections employees, to not afford inmate Plaintiff Justice as prescribed in Utah Constitution United States of America Constitution, and Utah Supreme Courts, Opinion as to, Foots v. Board of Pardons, and Richard Ray Thomas vs. Utah State, Petition.

23. Plaintiff was denied to be present at Board of Pardons Hearing July 1989. To include Mr. Was and has been brought before Board of Pardons for a Rescission hearing which was and is a violation of Boards Policy and Procedure. Was given more time on Concurrent Sentence, imposed by Third District Court Judge, which is Double Jeopardy as stated in Utah Constitution, also Board hearings were not conducted as to Boards Policy & Procedure, that Board failed and refused to Credit time served, did not allow to refute or respond to evidence used in hearing, which determined Plaintiff's time, that Board violated Utah State Matrix Guidelines for time to go, that Board members have ignored and failed, intentionally and knowingly, of properly dispensing the Justice, warranted in Utah State Board of Pardons Rules Policy & Procedure, to include denying counsel and examining evidence prior to hearing and refusing and failing, to provide their Assigned duties.

24. Plaintiff was and is, being denied access to Courts by Savaya, Van Dam and Staffed by not following Utah Civil Rules of Procedure 65B. As of July 31st 1991 after the Ruling Opinion from Utah Supreme Court, authorizing inmates at the Utah State Prison, the right to appeal decisions of the Utah Board of Pardons, through a petition for Writ of Habeas Corpus and Post Conviction Relief. In which Third District Court Judge, dismissed petition without allowing,

CIVIL RIGHTS COMPLAINT (pursuant to 42 U.S.C. Section 1983)

due process, equal protection of law. To include imposing cruel and unusual punishment.

25. Defendants, Angerhofer, Hunt, Bridgwell, Hansen, Hahn, Sibbitt, Palacios, Blanchard, Boyden, Cooke, P. Shattfield, D. Shattfield, Savaya, Van Dam, and Pino.

Are in violation of duties, according to, Utah State Judicial Conduct Commission, Utah Board of Pardon, Rules, and Utah Department of Corrections, and to include Utah Constitution, and United States of America Constitution.

C. CAUSE OF ACTION

26. Plaintiff alleges that the following constitutional rights, privileges or immunities have been violated and that following facts form the basis for the allegations:

9) Count I: On or about July 26, 1989 Plaintiff's Fifth, Eighth and Fourteenth Amendment rights to the Constitution of the United States, and Utah Constitution Articles I sections 10, 11, and 12. Were violated when the Board of Pardons, subjected Plaintiff to cruel and unusual punishment by not affording him the above rights, and.

(1) Plaintiff was not allowed at Hearing

(2) On or about July 26 1989 plaintiff did not have Counsel at hearing.

(3) That "All" Utah State Prison inmates have right to counsel at hearings, per Utah Supreme Court.

(4) The defendants failed on and refused to abide by United States Constitution, and or Utah Constitution, in regards to Equal Protection of Law.

(5) Defendants have failed refused, to follow Utah Board of Pardons, Policies & Procedures.

CIVIL RIGHTS COMPLAINT (Pursuant to 42 U.S.C. Section 1983)

b) Count II: Plaintiff's Fifth and Fourteenth Amendment rights to the Constitution of the United States, 4/80 Utah Constitution rights Article VI Section 14, Article VII, Section 12 and Section 16, were violated when the defendants failed and refused to allow plaintiff, due process, and equal protection of the law

(1) By not allowing and failing to honor the requirements in Board of Pardons Policy and Procedure to be present at hearing.

(2) Defendants failed to follow Policy and Procedure of Utah Judicial Conduct Commissions, facts of the investigation to Utah Supreme Court.

(3) Defendants failed to follow process established in Utah Constitution by refusing to notify of evidence to be used at Board of Pardons hearing October on or about 18th, 1990

(4) Defendants having not the authority to make plaintiff go Santaneca twice.

(5) Defendants also violated Plaintiff's rights by ignoring Judges and Defense attorneys letter for (14 months time served) and commitment paper signed by Judge Richard Moffatt.

(6) Defendants knowingly and intentionally have ignored letters requests as described in Policy and Procedure of Board of Pardons Rules, providing proof of these matters.

c) Count III: On or about September 1st 1991, Plaintiff's, Fourteenth Amendment rights were violated to include Utah Constitution's Articles VIII Sections 2, 3, 4, 12, and 13.

(1) Defendants did not honor plaintiff's right to fair and equal treatment affording him formal responses from "All" the departments, agencies, responsible for

CIVIL RIGHTS COMPLAINT (Pursuant to 42 U.S.C. Section 1983)

administering Justice.

(2) Defendants have conspired to prevent Plaintiff from Counsel representation, by speaking with Prison Contract Attorney about legal details, and performing requirements of job description.

(3) By obtaining selective materials from Utah Attorney General, that would change the outcome of litigation, knowingly and intentionally to Plaintiff making him suffer, and remaining in prison.

(4) Defendants have not followed Utah Constitution regarding a specific, which makes a different outcome of Board of Pardons, decision, making "body", which is, Article VII section 12., which has not been in effect.

D. PREVIOUS LAWSUITS AND ADMINISTRATIVE RELIEF

27. Plaintiff has not filed any other lawsuits in state or federal court dealing with the same facts involved in this action.

28. Plaintiff has previously sought informal and formal relief from the appropriate administrative officials regarding the acts complained of in above paragraphs herein. Plaintiff has filed numerous grievances through the Utah State grievance system, but has failed to receive any action or relevant explanation of the acts set forth within.

E. REQUEST FOR RELIEF

WHEREFORE Plaintiff prays for the following relief:

- (a) Trial by Jury,
- (b) That Counsel be appointed to represent the Plaintiff.
- (c) That Plaintiff be awarded, \$300.00's per day for

CIVIL RIGHTS COMPLAINT (Pursuant to 42 U.S.C. Section 1983)

every day spent in Utah State Prison, since serving Twenty Three months over Board of Pardons, Matrix Guidelines and Credit for Time Served, awarded by Third District Court Judge - Richard Moffatt.

To include, Eight months, served in Utah State Prison custody on I.P.R. put Court in Sanpete County Jail waiting for Board of Pardons, Parole Hearing.

(4) Grant an Injunction to prevent the Utah Board of Pardons, and Department of Corrections from keeping in custody, while awaiting trial, and that Plaintiff be placed on parole, forthwith.

(4) Compensatory damages in the amount of \$3,000,000.00. Three Million Dollars.

(4) Grant plaintiff attorney fees and costs for this action.

(9) Such other and further relief that court deems proper and necessary in this action

12-8-91

Richard Dee Thomas

CIVIL RIGHTS COMPLAINT (Pursuant to 42 U.S.C. Section 1983)

DECLARATION UNDER PENALTY OF PERJURY

The undersigned declares under penalty of perjury that he is the Plaintiff in the above action, that he has read the above complaint and that the information contained therein is true and correct.
28 U.S.C. Sec. 1976 18 U.S.C. Sec. 1621.

EXECUTED at Utah State Prison on 12-8 1991

Richard Dee Thomas